

MONTEREY COUNTY ZONING ADMINISTRATOR

Meeting: August 9, 2012	Time: 1:30 pm	Agenda Item No.: 5
Project Description: Consider an after-the-fact Amendment (PLN110366) to a previously approved Coastal Administrative Permit (PLN070074) which allowed the development of test well, (authorizing the construction and use of the well for testing to establish a water source); and a septic system design. This after-the-fact Amendment would approve a new well site and allow the completed test well to remain at its current location as a test well.		
Project Location: 3072 Serra Avenue, Carmel		APN: 009-081-027-000
Planning File Number: PLN110366		Owner: William Dan Powell Agent: John Bridges
Planning Area: Carmel Area Land Use Plan		Flagged and staked: No
Zoning Designation : "MDR/2 D (CZ)" [(Medium Density Residential, 2 units per acre with Design Control overlay (Coastal Zone)]		
CEQA Action: Categorically Exempt per Section 15304		
Department: RMA - Planning Department		

RECOMMENDATION:

Staff recommends that the Zoning Administrator adopt a resolution (**Exhibit C**) to:

- 1) Find the project Categorically Exempt per Section 15304; and
- 2) Approve the Amendment (PLN110366) to a Coastal Administrative Permit (PLN070074) allowing the development of a test well and authorizing the construction and use of the well for testing to establish a water source, based on the findings and evidence and subject to the conditions of approval (**Exhibit C**)

PROJECT OVERVIEW: The subject property is located at 3072 Serra Avenue, Carmel and is zoned Medium Density Residential. On June 11, 2008, the Director of RMA-Planning approved a Coastal Administrative Permit (PLN070074) to allow the development of test well, (authorizing the construction and use of the well for testing to establish a water source); and a septic system design. Resolution 070074 is attached as **Exhibit D**. No septic system is proposed for this property. The property, once developed, would connect to the sewer lateral located on the southwesterly corner of the property.

The well site, approved under PLN070074, was near some large oak trees that would have interfered with the operation of the well drilling rig and was also to be located in a vault in a proposed driveway. At the well drilling contractor's and owner's request, Environmental Health Bureau staff reviewed and approved a new well site approximately 50 feet north of the originally approved site. The well was drilled in February of 2009. Because the new location of the well was somewhat distant from the previously approved location, an Amendment to the Coastal Administrative Permit should have been required prior to the construction of the well; however the owner was unaware of this requirement at the time. Pursuant to Section 20.76.115.A, an application for a Minor and Trivial Amendment (PLN110366) to allow the test well to remain in the location where it was drilled was submitted on January 19, 2012. The application has been referred to the Zoning Administrator for a public hearing pursuant to Section 20.76.115.A because a letter requesting a public hearing was submitted by Glen R. Mozingo (**Exhibit F**) on June 12, 2012.

Health regulations require a 25-foot setback between a water well and any sewer laterals or wastewater lines. The Powell well is located approximately 15 feet from Mozingo's side property line and the required 25-setback therefore crosses the property line onto the Mozingo property. Mozingo has expressed concern that the present location of the well and the required setback create

an unauthorized taking and easement onto his property. Staff analysis of the effect of the well setback on the Mozingo property finds that approximately 246 square feet are affected. However, the bulk of that area is within the structural setbacks established by the Zoning Ordinance and only approximately 54 square feet of that area could actually be developed with structures. If approved this amendment would allow the drilled well to remain in its current location. See attached discussion for additional information (**Exhibit B**).

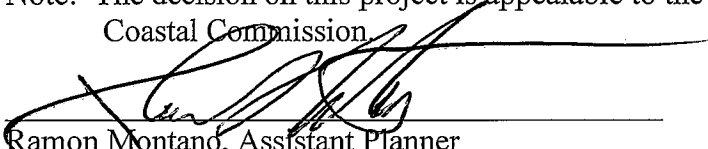
OTHER AGENCY INVOLVEMENT: The following agencies and departments reviewed this project:

- ✓ RMA - Public Works Department
- ✓ Environmental Health Bureau
- ✓ Water Resources Agency
- ✓ Cypress Fire Protection District
- California Coastal Commission

Agencies that submitted comments are noted with a check mark ("✓"). Conditions recommended by RMA-Planning Department and RMA - Public Works Department have been incorporated into the Condition Compliance/Mitigation Monitoring and Reporting Plan attached to the draft resolution (**Exhibit C**).

The project was not referred to the Carmel Unincorporated/Highlands Land Use Advisory Committee (LUAC) for review. Based on the LUAC Procedure guidelines adopted by the Monterey County Board of Supervisors per Resolution No. 08-338, this application did not warrant referral to the LUAC because the project did not include a lot line adjustment, variance, or a Design Approval and was exempt from environmental review.

Note: The decision on this project is appealable to the Board of Supervisors and not the California Coastal Commission.


Ramon Montano, Assistant Planner
(831) 755-5169, montanor@co.monterey.ca.us
August 3, 2012

cc: Front Counter Copy; Zoning Administrator; RMA - Planning; RMA - Public Works Department; Environmental Health Bureau; Water Resources Agency; California Coastal Commission; Laura Lawrence, Planning Services Manager; Delinda Robinson Senior Planner; Ramon Montano, Project Planner; Carol Allen, Senior Secretary; Dan Powell, Owner; John Bridges, Agent; The Open Monterey Project; LandWatch; Planning File PLN110366.

Attachments:	Exhibit A	Project Data Sheet
	Exhibit B	Discussion
	Exhibit C	Resolution
		• Recommended Conditions of Approval
		• Site Plan
	Exhibit D	Powell resolution PLN070074
	Exhibit E	Vicinity Map
	Exhibit F	Project Correspondence

This report was reviewed by Laura Lawrence, Planning Services Manager, and Delinda Robinson Senior Planner.

EXHIBIT A

Project Information for PLN110366

Project Information:

Project Name:	POWELL WILLIAM DAN	
Location:	3072 SERRA AVE CARMEL	
Permit Type:	Permit Amendment	
Environmental Status:	Exempt	Final Action Deadline (884): 4/17/2012
Existing Structures (sf):	0	Coverage Allowed: 35%
Proposed Structures (sf):	0	Coverage Proposed: 0
Total Sq. Ft.:	0	Height Allowed: 30'
Tree Removal:	NO	Height Proposed: 0
Water Source:	WELL	FAR Allowed: 45%
Water Purveyor:	N/A	FAR Proposed: 0
Sewage Disposal (method):	SEWER	Lot Size: 7573
Sewer District:	CAWD	Grading (cubic yds.): 0

Parcel Information:

Primary APN:	009-081-027-000	Seismic Hazard Zone:	MODERATE
Applicable Plan:	CARMEL LUP	Erosion Hazard Zone:	MODERATE
Advisory Committee:	CARMEL HIGHLANDS UNINCORPERATED	Fire Hazard Zone:	HIGH
Zoning:	MDR/2-D (CZ)	Flood Hazard Zone:	NO
Land Use Designation:	2 UNITS PER ACRE	Archaeological Sensitivity:	HIGH
Coastal Zone:	YES	Viewshed:	NO
Fire District:	CYPRESS FPD	Special Setbacks on Parcel:	NO

Reports on Project Parcel:

Soils Report #:	N/R
Biological Report #:	N/R
Geologic Report #:	N/R
Forest Management Rpt. #:	N/R
Archaeological Report #:	LIB080294
Traffic Report #:	N/R

EXHIBIT B DISCUSSION

Project Description

The project consists of an Amendment (PLN110366) to a previously approved Coastal Administrative Permit (PLN070074) which allowed the development of test well (authorizing the construction and use of the well for testing to establish a water source); and a septic system design. This after-the-fact Amendment would approve a new well site and allow the completed test well to remain at its current location as a test well. Contrary to the resolution for PLN070074, no septic system is proposed for this property. The property, once developed, would connect to the sewer lateral located on the southwesterly corner of the property.

The project site is a 7,573 square foot lot located at 3072 Serra Avenue in the Carmel Woods neighborhood in Carmel. The undeveloped site is a corner lot that slopes gently (5 percent or less) upwards from Serra Avenue. Vegetation on the site consists primarily of grasses and Coast live oak trees.

History of Permit Activity

The Powell Coastal Administrative Permit (PLN070074) was approved administratively on June 11, 2008. The original expiration date of the permit was June 11, 2010. Monterey County Ordinance No. 5155, adopted by the Board of Supervisors on March 16, 2010, amended the zoning ordinance to provide for an automatic 24 month extension to discretionary permits approved between January 1, 2006 and January 1, 2009 that had not expired as of that date. Thus, the permit was automatically extended to June 11, 2012. The applicant applied for an amendment to the Coastal Administrative Permit on January 19, 2012. During the processing of the application for amendment, the application stays the expiration of Coastal Administrative Permit PLN070074.

Project Issues

In January of 2009, the well drilling contractor hired by the owner contacted Environmental Health Bureau (EHB) staff, requesting a well site inspection for a new well location on the Powell property. The originally approved well site was located near large oak trees that were not approved for removal and would have interfered with the drilling rig. The original well site was also to have been constructed in a vault located within a future driveway, which is not considered to be an optimal well location. A new well site, approximately 50 feet north of the original site was approved in the field by EHB staff and the well was drilled in February of 2009. Prior to approving the new well location, EHB staff confirmed that the well met the required setbacks from existing sewer mains, sewer laterals and wastewater lines within existing and proposed structures. The new well site is away from trees and out of any proposed driveway locations. The new well site is also farther from the existing residence and sewer lateral. However, the new well site is also located approximately 15 feet from the side property line. Regulations set forth in California Well Bulletins 74-81 and 74-90 and Monterey County Code (MCC) 15.08 (Well Ordinance) establish setback distances from potential contaminating sources such as sewer and wastewater pipes. The required setback radius between water wells and sewer laterals or wastewater lines is 25 feet. Thus, the required setback crosses the property line in an arc that extends a maximum of 10 feet into the property owned by Glen R. Mazingo to the east. Mr. Mazingo is concerned that the present location of the well and the required setback create an unauthorized taking and easement onto his property. Staff analysis of the effect of the well setback on the Mazingo property finds that approximately 246 square feet are affected. However the bulk of that area is within the structural setbacks established by the Zoning Ordinance and only approximately 54 square feet of that area could actually be developed with structures. The sphere of influence created from the 25-foot

radius required around the Powell well does not extend upon any existing structures on the Mozingo property. The well setback would not preclude the property owner from developing the lot further nor does the well setback affect the current use of the property.

At the time the well constructed in February of 2009, County regulations did not require an owner to obtain permission from the adjacent property owner for a setback from a well to cross property lines. On May 25, 2010, the Board of Supervisors adopted Interim Ordinance No. 5160, which recognized that the required setbacks from wells drilled on small lots may impact neighboring lots and that further study of the issue was needed. The Interim Ordinance No. 5160 did not establish any regulations related to well setbacks and has since expired.

Environmental Review

The County found the previously approved project (PLN070074) to be exempt from environmental review pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15304, which categorically exempts minor alterations to land, water, and or vegetation. The project as amended is consistent with the previously approved project and does not cause any impacts not already assessed in the original permit application.

Recommendation

Staff recommends that the Zoning Administrator find the proposed Amendment consistent with the action of the previously approved Coastal Administrative Permit (PLN070074) and approve the Amendment PLN110366 allowing the relocation of the well site to its new location subject to the findings evidences and conditions of approval contained within the draft resolution (**Exhibit C**).

EXHIBIT C
DRAFT RESOLUTION

**Before the Zoning Administrator in and for the
County of Monterey, State of California**

In the matter of the application of:

William Dan Powell (PLN110366)

RESOLUTION NO.

Resolution by the Monterey County Zoning
Administrator:

- 1) Finding the project Categorically Exempt per
Section 15304; and
- 2) Approving the Amendment (PLN110366) to
Coastal Administrative Permit (PLN070074)
allowing the development of a test well and
authorizing the construction and use of the well
for testing to establish a water source.

[PLN110366, Powell, 3072 Serra Avenue, Carmel,
Carmel Area Land Use Plan, Coastal Zone
(Assessor's Parcel Number 009-081-027-000)]

The Powell application PLN110366 came on for public hearing before the Monterey County Zoning Administrator on August 9, 2012. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Zoning Administrator finds and decides as follows:

FINDINGS AND EVIDENCE

1. **FINDING:** **CONSISTENCY** - The Project, as conditioned, is consistent with the applicable plans and policies which designate this area as appropriate for development.

- EVIDENCE:** a) During the course of review of this application, the project has been reviewed for consistency with the text, policies, and regulations in:
- The 1982 Monterey County General Plan;
 - The Carmel Area Land Use Plan (LUP);
 - Monterey County Coastal Implementation Plan Part 4 (CIP); and
 - Monterey County Zoning Ordinance (Title 20).

No conflicts were found to exist. No communications were received during the course of review of the project indicating any inconsistencies with the text, policies, and regulations in these documents.

- b) The property is located at 3072 Serra Avenue Carmel, (Assessor's Parcel Number 009-081-027-000), located at the intersection of Serra Avenue and Camino Del Monte, Carmel Area, Coastal Zone. The parcel is zoned Medium Density Residential, 2 units per acre in the Coastal Zone ["MDR/2 D (CZ)"] which allows a density of two residential units per acre. The project is located in the Coastal Zone,

which allows for residential uses and the creation of wells subject to a Coastal Administrative Permit in each case. Therefore, the project is an allowed land use for this site.

- c) The project is consistent with the applicable policies in the Carmel Area Land Use Plan (LUP) regarding Water Resources. LUP Policy 2.4.4.A.1 requires new development to demonstrate that adequate water is available. The test well yielded a capacity of approximately 29.51 gallons per minute, which exceeds the Monterey Peninsula Water Management District's (MPWMD) calculated maximum day demand of 1.23 gallons per minute (gpm) thereby meeting MPWMD requirements for obtaining a water distribution system permit. The post-recovery sustainable pumping rate of 7.14 gpm documented in the well assessment report exceeds the Monterey County Health Department's (MCHD) maximum day demand of 3 gpm, thereby exceeding MCHD requirements for obtaining a single-connection water system permit.
- d) California Well Bulletins 74-81 and 74-90 and Monterey County Code Chapter 15.08 establish setback distances from wells to potentially contaminating sources such as sewer and wastewater pipes. At the time the well constructed in February of 2009, County regulations did not require an owner to obtain permission from the adjacent property owner for a setback from a well to cross property lines.
- e) On May 25, 2010, the Board of Supervisors adopted Interim Ordinance No. 5160, which recognized that the required setbacks from wells drilled on small lots may impact neighboring lots and that further study of the issue was needed. The Interim Ordinance No. 5160 did not establish any regulations related to well setbacks and has since expired.
- f) In January of 2009, the Environmental Health Bureau (EHB) conducted a site inspection to consider the new location based upon interference from large oak trees near the original well site. The new well site being considered was 50-feet from the original site, north towards Serra Ave and 15-feet away from the neighboring property. The approved well site was originally to be located within a proposed driveway for the proposed Powell residence. The well was altered due to two factors: 1) the well was located in an area near existing trees, not permitted for removal, which could interfere with the driller accessing the area where the well was to be drilled; and 2) the EHB agreed that the locating the well in the driveway in a vault was not preferable. The well site was approved to be relocated approximately 50 feet north from the originally approved well site. The new well site would then be 15 feet away from the Mozingo property line adjacent to Serra Ave. The new location created a radius that would extend 10 feet into the adjacent property creating a sphere of influence over a portion of the driveway of the Mozingo property. Upon reviewing setback requirements established under the zoning, it was determined that the radius would only affect approximately 54 square feet of developable area. This would not preclude the property owner from developing the lot further.

- g) The property is located within a Design Control district zoning overlay. No design approval was required for this project because the entitlement does not allow the development of any new structures.
- h) The project planner conducted a site inspection in January of 2012 to verify that the project on the subject parcel conforms to the plans listed above.
- i) Water system facilities, including wells and storage tanks, are allowed pursuant to Title 20 (Section 20.12.040) and Title 15.04 of the Monterey County Code. The County requires water source wells to demonstrate water quality and source capacity over a 72 hour period when located in fractured rock. The Environmental Health Bureau reviewed the well completion report and has approved the well for domestic use.
- j) The project was not referred to the Carmel Unincorporated/Highlands Land Use Advisory Committee (LUAC) for review. Based on the LUAC Procedure guidelines adopted by the Monterey County Board of Supervisors per Resolution No. 08-338, this application did not warrant referral to the LUAC because the project did not include a lot line adjustment, variance, or a Design Approval and was exempt from environmental review.
- k) All applicable conditions of approval from PLN070074 have been carried forward to permit PLN110366. The following conditions have been previously cleared or are no longer applicable:

No.	Description	Status	Date Cleared
3	PD002-Permit Approval Notice	Cleared	7/21/2008
5	PDSP001-Drilling Spoil Containment	No longer required	Drilling completed
6	PDSP002-Drainage Plan	No longer required	Drilling completed
10	PD011-Tree and Root Protection	No longer required	Drilling completed
11	EH8-Well Construction permit	Previously complied with	Drilling completed
12	EH9-New Well Pump Test	Previously complied with	Drilling completed

- l) The following new conditions of approval have been incorporated into the attached Conditions of Approval:

New Condition # PLN110366	Old Condition # PLN070074	Description
1	1	Specific Uses Only
2	3	Permit Approval Notice
3	n/a	Permit Expiration
4	4	Cultural Resources
5	2	Indemnification Agreement

New Condition # PLN110366	Old Condition # PLN070074	Description
6	7	Restoration
7	8	Well Report
8	9	Encroachment

- m) New Conditions of Approval are attached to this resolution.
- n) The application, project plans, and related support materials submitted by the project applicant to the Monterey County Resource Management Agency - Planning Department for the proposed amendment found in project files PLN110366 and PLN070074.

2. **FINDING:** **AMENDMENT** - The County has received and processed an Amendment to PLN070074.

- EVIDENCE:**
- a) On June 11, 2008, the Director of Planning approved PLN070074 for a Coastal Administrative Permit to allow the development of a test well (authorizing the construction and use of the well for testing to establish a water source) in Resolution 070074.
 - b) On January 19, 2012, an application (PLN110366) was submitted to amend PLN070074.
 - c) This Amendment allows a change in the previously approved location of a test well to a new location on the site in conformance with PLN070074 as reflected in the revised application. This modification shall be in addition to the previously applied findings, evidence and carries forward any conditions deemed valid by the RMA-Planning Department, including conditions not previously cleared for Coastal Administrative Permit PLN070074, incorporated herein as conditions.
 - d) No previous Amendments have been prepared for this property or for PLN070074.
 - e) Pursuant to Monterey County Code Section 20.12.040.G, the project does not cause impacts not already assessed in original permit action. As approved and amended, permit number, PLN110366 will become and be referred to as the approved permit.
 - f) The project is consistent with the previous approval as it will provide the property with a potable water source in the same manner approved under PLN070074.
 - g) The well site was approved by the Environmental Health Bureau prior to its construction in its current location. The well was constructed in the manner prescribed under the original permit PLN070074.
 - h) The application, project plans, and related support materials submitted by the project applicant to the Monterey County Resource Management Agency - Planning for the proposed Amendment found in project files PLN110366 and PLN070074.

3. **FINDING:** **CEQA (Exempt)** - The project is categorically exempt from environmental review and no unusual circumstances were identified to exist for the proposed project.

- EVIDENCE:**
- a) California Environmental Quality Act (CEQA) Guidelines Section 15304 categorically exempts minor alteration to land, water, and or

- vegetation.
- b) The County previously approved the creation of a test well to determine if a domestic water source could be created for the Powell property. The well meets County regulations regarding site development standards, setback requirements from contaminant sources pursuant to Monterey County Code Chapters 15.04 and 15.08 (Well Ordinance); and in California Well Standards Bulletins 74-81 and 74-90, regarding set back requirements, source capacity and water quality testing. The Monterey County Environmental Health Bureau reviewed a report prepared for the project confirming that the well would not have a significant cumulative drawdown impacts on any neighboring wells within or out to 1,000 feet from the pumping well.
 - c) No adverse environmental effects were identified during staff review of the development application during a site visit in January of 2012.
 - d) None of the exceptions under CEQA Guidelines Section 15300.2 applies to this project. The project is located in a residential zoning district which allows residential development and the development of a water source wells. The project is not located near a Scenic Highway, Hazardous Waste Sites, nor will it affect any Historical Resources.
 - e) The Well Assessment Report (LIB120164) prepared for the project concluded that the subject well will individually have no direct or significant cumulative offsite impacts to neighboring wells.
 - f) Finding 1, 2, and associated evidence, in conjunction with the material in the Planning File PLN110366, support the conclusion that the establishment of the existing test well as a permanent water source well does not have an adverse effect on the health, safety, and welfare of persons either residing or working in the neighborhood.
 - g) Staff conducted a site inspection in January of 2012 to verify that the site is suitable for this use.
 - h) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development found in Project Files PLN110366 and PLN070074.

4. **FINDING:** **REQUESTING A PUBLIC HEARING** - consideration for the request for the amendment has been carried out pursuant to Monterey County Code Section 20.84.040.A of Monterey County Code Title 20 (Zoning).

- EVIDENCE:**
- a) Amendments to previously-approved Coastal Administrative Permit and Coastal Development Permits may be approved by the Director of Planning. However, an objection was received requesting a public hearing, pursuant to Section 20.76.060.A.5. The County referred the project to the Zoning Administrator. A noticed public hearing was conducted pursuant to the public hearing provisions of Monterey County Code Chapter 20.84.
 - b) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning Department for the proposed development found in Project

5. **FINDING:** **APPEALABILITY** - The decision on this project may be appealed to the Board of Supervisors and not the California Coastal Commission.
- EVIDENCE:** a) Per Section 20.86.080 A. (Monterey County Coastal Implementation Plan Part 1) Title 20 Zoning Ordinances.
- b) Per Section 20.86.080.A of the Monterey County Zoning Ordinance (Development Appealable to the Coastal Commission), the project is not subject to appeal by/to the California Coastal Commission because the project is listed as a principle used allowed.

DECISION

NOW, THEREFORE, based on the above findings and evidence, the Zoning Administrator does hereby:

- 1) Find the project (PLN110366) Categorically Exempt per Section 15304; and
- 2) Approve the Amendment (PLN110366) to Coastal Administrative Permit (PLN070074) allowing the development of a test well and authorizing the construction and use of the well for testing to establish a water source, in general conformance with the attached sketch and subject to the attached conditions, and subject to the conditions in PLN070074 (Resolution No. 070074) all being attached hereto and incorporated herein by reference.

PASSED AND ADOPTED this 9th day of August by:

Jacqueline Onciano, Zoning Administrator

COPY OF THIS DECISION MAILED TO APPLICANT ON

THIS APPLICATION IS APPEALABLE TO THE BOARD OF SUPERVISORS.

IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE CLERK TO THE BOARD ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE

THIS PROJECT IS LOCATED IN THE COASTAL ZONE AND IS NOT APPEALABLE TO THE COASTAL COMMISSION. UPON RECEIPT OF NOTIFICATION OF THE FINAL LOCAL ACTION NOTICE (FLAN) STATING THE DECISION BY THE FINAL DECISION MAKING BODY, THE COMMISSION ESTABLISHES A 10 WORKING DAY APPEAL PERIOD. AN APPEAL FORM MUST BE FILED WITH THE COASTAL COMMISSION. FOR FURTHER INFORMATION, CONTACT THE COASTAL COMMISSION AT (831) 427-4863 OR AT 725 FRONT STREET, SUITE 300, SANTA CRUZ, CA

This decision, if this is the final administrative decision, is subject to judicial review pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6. Any Petition for Writ of Mandate must be filed with the Court no later than the 90th day following the date on which this decision becomes final.

NOTES

1. You will need a building permit and must comply with the Monterey County Building Ordinance in every respect.

Additionally, the Zoning Ordinance provides that no building permit shall be issued, nor any use conducted, otherwise than in accordance with the conditions and terms of the permit granted or until ten days after the mailing of notice of the granting of the permit by the appropriate authority, or after granting of the permit by the Board of Supervisors in the event of appeal.

Do not start any construction or occupy any building until you have obtained the necessary permits and use clearances from the Monterey County Planning Department and Building Services Department office in Salinas.

2. This permit expires 3 years after the above date of granting thereof unless construction or use is started within this period.

Monterey County Planning Department

DRAFT Conditions of Approval/Mitigation Monitoring Reporting Plan

PLN110366

1. PD001 - SPECIFIC USES ONLY

Responsible Department: Planning Department

Condition/Mitigation Monitoring Measure: This amendment (PLN110366) to a previously approved Coastal Administrative Permit (PLN070074), for development of a test well to establish a water source, allows the completed test well to remain at its current location as a test well. This permit was approved in accordance with County ordinances and land use regulations subject to the terms and conditions described in the project file and in project file PLN070074 (Resolution No. 070074). The property is located at 3072 Serra Avenue Carmel, (Assessor's Parcel Number 009-081-027-000). Neither the uses nor the construction allowed by this permit shall commence unless and until all of the conditions of this permit are met to the satisfaction of the Director of the RMA - Planning Department. Any use or construction not in substantial conformance with the terms and conditions of this permit is a violation of County regulations and may result in modification or revocation of this permit and subsequent legal action. No use or construction other than that specified by this permit is allowed unless additional permits are approved by the appropriate authorities. To the extent that the County has delegated any condition compliance or mitigation monitoring to the Monterey County Water Resources Agency, the Water Resources Agency shall provide all information requested by the County and the County shall bear ultimate responsibility to ensure that conditions and mitigation measures are properly fulfilled.
(RMA - Planning Department)

Compliance or Monitoring Action to be Performed: The Owner/Applicant shall adhere to conditions and uses specified in the permit on an ongoing basis unless otherwise stated.

2. PD002 - NOTICE PERMIT APPROVAL

Responsible Department: Planning Department

Condition/Mitigation Monitoring Measure: The applicant shall record a Permit Approval Notice. This notice shall state:
"An Amendment (Resolution Number xxx) was approved on August 9, 2012 by the Zoning Administrator for Assessor's Parcel Number 009-081-027-000. The permit was granted subject to 8 conditions of approval which run with the land. A copy of the permit is on file with the Monterey County RMA - Planning Department."
Proof of recordation of this notice shall be furnished to the Director of the RMA - Planning Department prior to issuance of building permits or commencement of the use.
(RMA - Planning Department)

Compliance or Monitoring Action to be Performed: Prior to the issuance of grading and building permits or commencement of use, the Owner/Applicant shall provide proof of recordation of this notice to the RMA - Planning Department.

3. PD032(A) - PERMIT EXPIRATION

Responsible Department: Planning Department

Condition/Mitigation Monitoring Measure: The permit shall be granted for a time period of 3 years, to expire on August 9, 2015 unless use of the property or actual construction has begun within this period. (RMA-Planning Department)

Compliance or Monitoring Action to be Performed: Prior to the expiration date stated in the condition, the Owner/Applicant shall obtain a valid grading or building permit and/or commence the authorized use to the satisfaction of the Director of Planning. Any request for extension must be received by the Planning Department at least 30 days prior to the expiration date.

4. PD003(A) - CULTURAL RESOURCES NEGATIVE ARCHAEOLOGICAL REPORT

Responsible Department: Planning Department

Condition/Mitigation Monitoring Measure: If, during the course of construction, cultural, archaeological, historical or paleontological resources are uncovered at the site (surface or subsurface resources) work shall be halted immediately within 50 meters (165 feet) of the find until a qualified professional archaeologist can evaluate it. The Monterey County RMA - Planning Department and a qualified archaeologist (i.e., an archaeologist registered with the Register of Professional Archaeologists) shall be immediately contacted by the responsible individual present on-site. When contacted, the project planner and the archaeologist shall immediately visit the site to determine the extent of the resources and to develop proper mitigation measures required for recovery. (RMA - Planning Department)

Compliance or Monitoring Action to be Performed: The Owner/Applicant shall adhere to this condition on an on-going basis. Stop work within 50 meters (165 feet) of uncovered resource and contact the Monterey County RMA - Planning Department and a qualified archaeologist immediately if cultural, archaeological, historical or paleontological resources are uncovered. When contacted, the project planner and the archaeologist shall immediately visit the site to determine the extent of the resources and to develop proper mitigation measures required for the discovery.

5. PD004 - INDEMNIFICATION AGREEMENT

Responsible Department: Planning Department

**Condition/Mitigation
Monitoring Measure:**

The property owner agrees as a condition and in consideration of approval of this discretionary development permit that it will, pursuant to agreement and/or statutory provisions as applicable, including but not limited to Government Code Section 66474.9, defend, indemnify and hold harmless the County of Monterey or its agents, officers and employees from any claim, action or proceeding against the County or its agents, officers or employees to attack, set aside, void or annul this approval, which action is brought within the time period provided for under law, including but not limited to, Government Code Section 66499.37, as applicable. The property owner will reimburse the County for any court costs and attorney's fees which the County may be required by a court to pay as a result of such action. The County may, at its sole discretion, participate in the defense of such action; but such participation shall not relieve applicant of his obligations under this condition. An agreement to this effect shall be recorded upon demand of County Counsel or concurrent with the issuance of building permits, use of property, filing of the final map, whichever occurs first and as applicable. The County shall promptly notify the property owner of any such claim, action or proceeding and the County shall cooperate fully in the defense thereof. If the County fails to promptly notify the property owner of any such claim, action or proceeding or fails to cooperate fully in the defense thereof, the property owner shall not thereafter be responsible to defend, indemnify or hold the County harmless.
(RMA - Planning Department)

**Compliance or
Monitoring
Action to be Performed:**

Upon demand of County Counsel or concurrent with the issuance of building permits, use of the property, recording of the final/parcel map, whichever occurs first and as applicable, the Owner/Applicant shall submit a signed and notarized Indemnification Agreement to the Director of RMA-Planning Department for review and signature by the County.

Proof of recordation of the Indemnification Agreement, as outlined, shall be submitted to the RMA-Planning Department.

6. PD033 -RESTORATION NATURAL MATERIALS

Responsible Department: Planning Department

**Condition/Mitigation
Monitoring Measure:**

Upon completion of the development, the area disturbed shall be restored to a condition to correspond with the adjoining area, subject to the approval of the Director of RMA - Planning Department. Plans for such restoration shall be submitted to and approved by the Director of the RMA - Planning Department prior to commencement of use.
(RMA - Planning Department)

**Compliance or
Monitoring
Action to be Performed:**

Prior to commencement of use, the Owner/Applicant shall submit restoration plans to the RMA - Planning Department for review and approval.

7. PDSP002-WELL COMPLETION REPORT (NON-STANDARD)

Responsible Department: Planning Department

**Condition/Mitigation
Monitoring Measure:**

Prior to commencement of the well use, evidence shall be submitted to RMA-Planning Department that the work has been completed (in the form of a well completion report).

**Compliance or
Monitoring
Action to be Performed:**

The owner shall submit well completion report to the RMA Planning Department prior to the commencement of use.

8. PWSP01 - ENCROACHMENT (NON-STANDARD)

Responsible Department: Public Works Department

Condition/Mitigation Monitoring Measure: Obtain an encroachment permit from the Department of Public Works and grade the existing shoulder for positive drainage control subject to the approval of the Department of Public Works. (Public Works)

Compliance or Monitoring Action to be Performed: Prior to Building/Grading Permits Issuance, Owner/Applicant shall obtain an encroachment permit from DPW prior to issuance of building permits and complete improvement prior to occupancy or commencement of use. Applicant is responsible in obtaining all permits and environmental clearances.

EXHIBIT C
POWELL PLN110366
SITE PLAN

EXHIBIT D
POWELL RESOLUTION PLN070074

RESOLUTION NO. 070074

A.P.N. # 009-081-027-000

FINDINGS & DECISION

In the matter of the application of
POWELL WILLIAM D (PLN070074)

for a Coastal Administrative Permit in accordance with Chapter 20.76 (Coastal Administrative Permits) of Title 20, Monterey County Code (Zoning), to allow the development of test well, (authorizing the construction and use of the well for testing to establish a water source); and a septic system design. The property is located at 3072 Serra Avenue Carmel, (Assessor's Parcel Number 009-081-027-000), located at the intersection of Serra Avenue and Camino Del Monte, Carmel Area, Coastal Zone.

Said Director of the Resource Management Agency – Planning Department, having considered the application and the evidence presented relating thereto,

FINDINGS OF FACT

FINDING: **CONSISTENCY** – The project as described in Condition No.1 and as conditioned, policies, requirements, and standards of the Monterey County General Plan, certified Monterey County Local Coastal Program (LCP). The LCP for this site consists of the Carmel Area Land Use Plan, Coastal Implementation Plan (Part 4), and the Coastal Implementation Plan Appendices (Part 6); Monterey County Coastal Implementation Plan (Part 1) or Zoning Ordinance (Title 20), which designates this area as appropriate for residential development.

- EVIDENCE:**
- (a) The text, policies, and regulations in the above referenced documents have been evaluated during the course of review of the application. No conflicts were found to exist. No communications were received during the course of review of the project to indicate that there is any inconsistency with the text, policies, and regulation in these documents.
 - (b) The property is located at 3072 Serra Avenue Carmel, (Assessor's Parcel Number 009-081-027-000), located at the intersection of Serra Avenue and Camino Del Monte, Carmel Area, Coastal Zone. The parcel is zoned Medium Density Residential, 2 units per acre in the Coastal Zone ["MDR/2 D (CZ)"] which allows a density of two residential units per acre. The proposed development includes a Coastal Administrative Permit to allow the development of test well, (authorizing the construction and use of the well for testing to establish a water source); and a septic system design. The subject property complies with all the rules and regulations pertaining to zoning uses and any other applicable provisions of Title 20, and is therefore suitable for the proposed development.
 - (c) The test well is intended to determine if an adequate water supply is available to serve future potential development of the parcel. This permit does not authorize the construction and operation of a permanent well.
 - (d) Environmental Health has not indicated that the use as proposed will adversely impact the natural supply of water necessary to maintain the environment and the supply available to meet the minimum needs of existing users during the driest years.
 - (e) Water system facilities, including wells and storage tanks, are allowed pursuant to Title 20 (Section 20.12.040) and Title 1504, Monterey County Code

- (f) The project planner conducted a site inspection on April 21, 2008 to verify that the project on the subject parcel conforms to the plans listed above.
- (g) The project was not referred to the Carmel Highlands Coastal Land Use Advisory Committee for review. Based on the current review guidelines adopted by the Monterey County Board of Supervisors per Resolution No. 04-236, this application did not warrant referral to the LUAC because the project does not include development on slopes greater than 30%, the project does not require the issuance of a Variance, and implementation of the project will not impact a designated scenic area. Furthermore, the project is exempt from CEQA review per Section 15303 of the CEQA Guidelines.
- (h) The application, project plans, and related support materials submitted by the applicant to the Monterey County RMA - Planning Department for the proposed development, found in Project File PLN07004, were found to be consistent with all the policies within the Carmel Land Use Plan, Coastal Implementation Plan Part 4 and the Coastal Implementation Plan Part 1 Section 20.12.

2. FINDING: SITE SUITABILITY – The site is physically suitable for the use proposed.

- EVIDENCE:**
- (a) The project has been reviewed for suitability by the following departments and agencies: RMA - Planning Department, Cypress Fire Protection District, Public Works, Environmental Health Division, and Water Resources Agency. There has been no indication from these departments/agencies that the site is not suitable. Conditions recommended have been incorporated.
 - (b) Staff conducted a site inspection on April 21, 2008 to verify that the site is suitable for this use.
 - (c) The application, project plans, and related support materials submitted by the applicant to the Monterey County RMA - Planning Department for the proposed development, found in Project File PLN070074.
 - (d) See findings 1, 2, and 3 and supporting evidence.

3. FINDING: CEQA (Exempt) – The project is categorically exempt from environmental review pursuant to California Environmental Quality Act Guidelines (CEQA) Sections 15304

- EVIDENCE:**
- (a) Section 15304 (Class 4) categorically exempts the minor private alterations in the condition of the land, water, or vegetation.
 - (b) The project includes the development of a new water source well within an area which is relatively flat and has minimal vegetation.
 - (c) The project is located within the medium density residential zoning district. The proposed well is a principal use allowed under the medium density residential zoning designation.
 - (d) Implementation of the project will not require tree removal, extensive grading, or development on slopes in excess of 30%.
 - (e) No adverse environmental effects were identified during staff review of the project application or during a site-visit on April 21, 2008.
 - (f) No unusual circumstances were found to exist that would cause a potential significant environmental impact to occur.
 - (g) The application, project plans, and related support materials submitted by the applicant to the Monterey County RMA - Planning Department for the proposed development, found in Project File PLN070074
 - (h) See preceding findings 1, 2, and supporting evidence.

4. FINDING: NO VIOLATIONS – The subject property is in compliance with all rules and regulations pertaining to zoning uses, subdivision, and other applicable provisions of the County's zoning ordinance (Title 20). Zoning violation abatement costs, if any, have been paid.

EVIDENCE: Staff verification of the Monterey County RMA - Planning Department and Building Services

Department records indicate that no violations exist on subject property.

- 5. FINDING: PUBLIC ACCESS** – The project is in conformance with the public access and public recreation policies of the Coastal Act and Local Coastal Program, and does not interfere with any form of historic public use or trust rights (see 20.70.050.B.4.a). No access is required as part of the project as no substantial adverse impact on access, either individually or cumulatively, as described in Section 20.70.050.B.4.c. of the Monterey County Coastal Implementation Plan, can be demonstrated.

- EVIDENCE:** (a) The subject property is not described as an area where the Local Coastal Program requires access.
(b) The subject property is not indicated as part of any designated trails or shoreline access as shown in Figure 3, the Shoreline Access/Trails Map, of the Carmel Area Land Use Plan.
(c) No evidence or documentation has been submitted or found showing the existence of historic public use or trust rights over this property.
(d) Staff site visit on April 21, 2008.

- 6. FINDING: HEALTH AND SAFETY** – The establishment, maintenance, and operation of the proposed development applied for will not under the circumstances of the particular case, be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood or to the general welfare of the County.

- EVIDENCE:** (a) The subject project if approved would not require variances or exception to any Health and Safety regulations within the county codes. The project as conditioned is consistent with all county regulations and Land Use Plan policies.
(b) The project as proposed was noticed for a public hearing as required under Section 20.84.040 of the Coastal Implementation Plan Part 1.
(c) Preceding findings and supporting evidence.

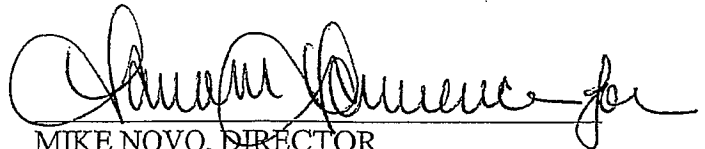
- 7. FINDING: APPEALABILITY** – The decision on this project is appealable to the Board of Supervisors. It is not appealable to the California Coastal Commission

EVIDENCE: Per Sections, 20.86.030 and 20.86.080 (Monterey County Zoning Ordinance Implementation Plan) of Title 20 of the Monterey County Zoning Ordinance.

DECISION

THEREFORE, it is the decision of said Director of the Resource Management Agency – Planning Department that said application for a Coastal Administrative Permit be granted as shown on the attached sketch, subject to the attached conditions.

PASSED AND ADOPTED this 11th day of June, 2008.



MIKE NOVO, DIRECTOR
RESOURCE MANAGEMENT AGENCY
PLANNING DEPARTMENT

COPY OF THIS DECISION WAS MAILED TO THE APPLICANT ON JUN 12 2008

THIS APPLICATION IS APPEALABLE TO THE **BOARD OF SUPERVISORS**. IF ANYONE WISHES TO APPEAL THIS DECISION, AN APPEAL FORM MUST BE COMPLETED AND SUBMITTED TO THE CLERK TO THE BOARD OF SUPERVISORS, ALONG WITH THE APPROPRIATE FILING FEE ON OR BEFORE JUN 22 2008

THIS PROJECT IS LOCATED IN THE COASTAL ZONE AND IS APPEALABLE TO THE BOARD OF SUPERVISORS. THIS PROJECT IS **NOT** APPEALABLE TO THE CALIFORNIA COASTAL COMMISSION.

THIS DECISION, IF THIS IS THE FINAL ADMINISTRATIVE DECISION, IS SUBJECT TO JUDICIAL REVIEW PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 1094.5 AND 1094.6. ANY PETITION FOR WRIT OF MANDATE MUST BE FILED WITH THE COURT NO LATER THAN THE 90TH DAY FOLLOWING THE DATE ON WHICH THIS DECISION BECOMES FINAL.

NOTES:

1. You will need a building permit and must comply with the Monterey County Building Ordinance in every respect.

Additionally, the Zoning Ordinance provides that no building permit shall be issued, nor any use conducted, otherwise than in accordance with the conditions and terms of the permit granted or until ten days after the mailing of notice of the granting of the permit by the appropriate authority, or after granting of the permit by the Board of Supervisors in the event of appeal.

Do not start any construction or occupy any building until you have obtained the necessary permits and use clearances from the Monterey County Resource Management Agency - Planning Department and Monterey County Building Services Department.

2. This permit expires two years after the above date of granting thereof, unless construction or use is started within this period.

**Monterey County Planning and Building Inspection
Condition Compliance and/or Mitigation Monitoring
Reporting Plan**

Project Name: **POWELL WILLIAM D**

File No: **PLN070074**

APN: **009-081-027-000**

Approval by: **RMA – Director of Planning**

Date: **June 11, 2008**

**Monitoring or Reporting refers to projects with an EIR or adopted Mitigated Negative Declaration per Section 21081.6 of the Public Resources Code.*

Permit Cond Number	Mitig. Number	Impact Addressed and Responsible Land Use Department	Compliance or Monitoring Actions to be performed where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (name/date)
1		<p>PD001 - SPECIFIC USES ONLY</p> <p>This Coastal Administrative Permit (PLN070074) allows the development of test well, (authorizing the construction and use of the well for testing to establish a water source); and a septic system design. The property is located at 3072 Serra Avenue Carmel, (Assessor's Parcel Number 009-081-027-000), located at the intersection of Serra Avenue and Camino Del Monte, Carmel Area, Coastal Zone. This permit was approved in accordance with County ordinances and land use regulations subject to the following terms and conditions. Neither the uses nor the construction allowed by this permit shall commence unless and until all of the conditions of this permit are met to the satisfaction of the Director of Planning and Building Inspection. Any use or construction not in substantial conformance with the terms and conditions of this permit is a violation of County regulations and may result in modification or revocation of this permit and subsequent legal action. No use or construction other than that specified by this permit is allowed unless the appropriate authorities approve additional permits. (RMA - Planning Department)</p>	Adhere to conditions and uses specified in the permit.	Owner/ Applicant	Ongoing unless other- wise stated	
2		<p>PD004 - INDEMNIFICATION AGREEMENT</p> <p>The property owner agrees as a condition and in consideration of the approval of this discretionary development permit that it will, pursuant to agreement and/or statutory provisions as applicable, including but not limited to Government Code Section 66474.9, defend, indemnify and hold harmless the County of Monterey or its agents, officers and employees from any claim, action or proceeding against the County or its agents, officers or employees to attack, set aside, void or annul this approval, which action is brought within the time period provided for under law, including but not limited to,</p>	<p>Submit signed and notarized Indemnification Agreement to the Director of RMA – Planning Department for review and signature by the County.</p> <p>Proof of recordation of the Indemnification Agreement, as outlined, shall be submitted to the RMA – Planning Department.</p>	Owner/ Applicant	Upon demand of County Counsel or concurrent with the issuance of building permits, use of the property,	

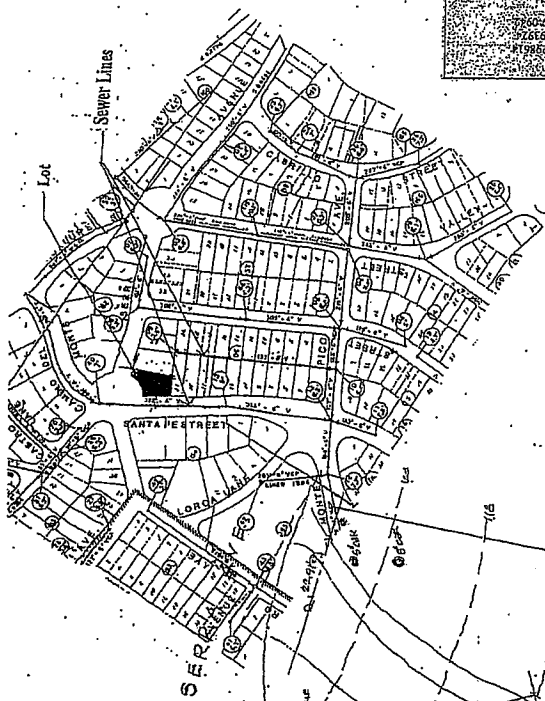
Permit Code Number	Mtg. Number	Impact Addressed, and Responsible Land Use Department	Compliance or Monitoring Actions to be performed, where applicable, a certified professional is required for action to be accepted	Responsible Party for Compliance	Timing	Verification of Compliance (date/da- te)
		Government Code Section 66499.37, as applicable. The property owner will reimburse the county for any court costs and attorney's fees which the County may be required by a court to pay as a result of such action. County may, at its sole discretion, participate in the defense of such action; but such participation shall not relieve applicant of his obligations under this condition. An agreement to this effect shall be recorded upon demand of County Counsel or concurrent with the issuance of building permits, use of the property, filing of the final map, whichever occurs first and as applicable. The County shall promptly notify the property owner of any such claim, action or proceeding and the County shall cooperate fully in the defense thereof. If the County fails to promptly notify the property owner of any such claim, action or proceeding or fails to cooperate fully in the defense thereof, the property owner shall not thereafter be responsible to defend, indemnify or hold the county harmless. (RMA - Planning Department)			filing of the final/parcel map, whichever occurs first and as applicable	
3		PBD002 - NOTICE-PERMIT APPROVAL The applicant shall record a notice which states: "A permit (Resolution No. 070074) was approved by the Director of Planning and Building Inspection for Assessor's Parcel Number 009-081-012-000 on June 11, 2008. The permit was granted subject to 12 conditions of approval which run with the land. A copy of the permit is on file with the Monterey County Planning and Building Inspection Department." Proof of recordation of this notice shall be furnished to the Director of Planning and Building Inspection prior to issuance of building permits or commencement of the use. (RMA - Planning Department)	Proof of recordation of this notice shall be furnished to PBI.	Owner/ Applicant	Prior to Issuance of grading and building permits or start of use.	
4		PD003(A) - CULTURAL RESOURCES - NEGATIVE ARCHAEOLOGICAL REPORT If, during the course of construction, cultural, archaeological, historical or paleontological resources are uncovered at the site (surface or subsurface resources) work shall be halted immediately within 50 meters (165 feet) of the find until a qualified professional archaeologist can evaluate it. The Monterey County RMA - Planning Department and a qualified archaeologist (i.e., an archaeologist registered with the Society of Professional Archaeologists) shall be immediately contacted by the responsible individual present on-site. When contacted, the project planner and	Stop work within 50 meters (165 feet) of uncovered resource and contact the Monterey County RMA - Planning Department and a qualified archaeologist immediately if cultural, archaeological, historical or paleontological resources are uncovered. When contacted, the project planner and the archaeologist shall immediately visit the site to determine the extent of the resources and to develop proper mitigation measures required for the	Owner/ Applicant/ Archaeologist	Ongoing	

Permit Condition Number	Mitig. Number	Impact/Addressed, and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (Date/Time)
		the archaeologist shall immediately visit the site to determine the extent of the resources and to develop proper mitigation measures required for the discovery. (RMA - Planning Department)	discovery.			
5		PDSP001 - DRILLING SPOIL CONTAINMENT (Non-Standard) Drilling mud and cement used for capping of the well shall not be allowed to escape the well site. Containment basins shall be installed. Drilling mud shall be temporarily stored in these basins so that none escapes into the surrounding habitat. The driller shall monitor the amount of mud contained in the basin to prevent overflow, and shall pump out and properly dispose of any and all mud generated by this project. All foreign material used in this project, including sand bags and their contents, shall be removed from the site after the project is completed. The applicant shall submit evidence of installation of containment basins prior to drilling of well. (RMA - Planning Department)	Submit evidence of installation of containment basins to the RMA - Planning Department prior to drilling of well.	Owner / Applicant	Prior to drilling of test well.	
6		PDSP002 - DRAINAGE PLAN (Non-Standard) The applicant shall ensure on-site and off-site impacts of water run-off from the pump test are minimized, and measures are used to minimize/contain erosion. (RMA - Planning Department)	Applicant and/or drilling contractor shall contact the assigned planner in the Planning Department to discuss strategies to reduce impacts, which may include the preparation of a formal drainage and/or erosion control plan.	CA Licensed Engineer / Owner / Applicant	Prior to commencement of the well use.	
7		PDSP003 - RESTORATION (Non-Standard) Upon completion of the work, the areas disturbed by well drilling activity shall be restored and native plant species shall be planted. (RMA - Planning Department)	Prior to commencement of the well use, submit evidence (photos) to the RMA-Planning Department demonstrating said restoration.	Owner / Applicant	Prior to commencement of the well use.	
8		PDSP004 - Well completion report (Non-Standard) Prior to commencement of the well use, evidence shall be submitted to RMA-Planning Department that the work has been completed (in the form of a copy of the well completion report). (RMA - Planning Department)	Submit well completion report to the RMA-Planning Department.	Owner / Applicant	Prior to commencement of the well use.	

Permit (Cond. Number)	Mitig. Number	Impact Addressed, and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (date)
9		SPW0001 – ENCROACHMENT NON STANDARD CONDITION Obtain an encroachment permit from the Department of Public Works and grade the existing shoulder for positive drainage control subject to the approval of the Department of Public Works. (Public Works)	Applicant shall obtain an encroachment permit from DPW prior to issuance of building permits and complete improvement prior to occupancy or commencement of use. Applicant is responsible to obtain all permits and environmental clearances.	Owner/ Applicant	Prior to Building/ Grading Permits Issuance	
10		PD011 – TREE AND ROOT PROTECTION Trees which are located close to the construction site(s) of the well shall be protected from inadvertent damage from construction equipment by fencing off the canopy driplines and/or critical root zones (whichever is greater) with protective materials, wrapping trunks with protective materials, avoiding fill of any type against the base of the trunks and avoiding an increase in soil depth at the	Submit evidence of tree protection to the RMA - Planning Department for review and approval.	Owner/ Applicant	Prior to the issuance of grading and/or building permits	

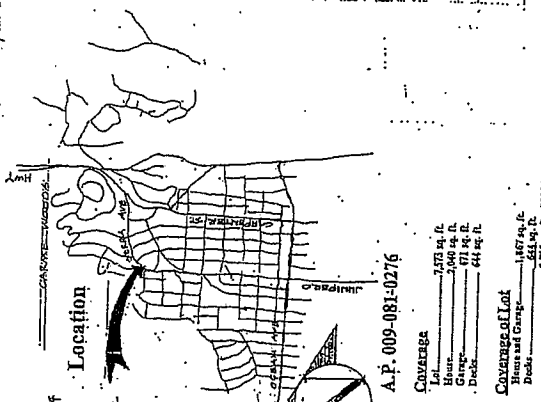
Permit Cont. Number	Mitig. Number	Impact / Addressed and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (date/when)
		feeding zone or drip-line of the retained trees. Said protection, approved by a certified arborist, shall be demonstrated prior to issuance of building permits subject to the approval of the RMA – Director of Planning. If there is any potential for damage, all work must stop in the area and a report, with mitigation measures, shall be submitted by a certified arborist. Should any additional trees not included in this permit be harmed, during grading or construction activities, in such a way where removal is required, the owner/applicant shall obtain required permits. (RMA - Planning Department)	Submit on-going evidence that tree protection measures are in place throughout grading and construction phases. If damage is possible, submit an interim report prepared by a certified arborist.	Owner/ Applicant/ Arborist	During Construction	
			Submit photos of the trees on the property to the RMA – Planning Department after construction to document that tree protection has been successful or if follow-up remediation or additional permits are required.	Owner/ Applicant	Prior to final inspection	
11		EH8 - WELL CONSTRUCTION PERMIT Obtain a water well drilling permit from the Division of Environmental Health and construct the well. (Environmental Health)	Submit the Well Completion Report to the Division of Environmental Health.	CA Licensed Engineer /Owner/ Applicant	Prior to the issuance of a building permit	

Permit Cond. Number	Mitig. Number	Impact Addressed, and Responsible Land Use Department	Compliance or Monitoring Actions to be performed. Where applicable, a certified professional is required for action to be accepted.	Responsible Party for Compliance	Timing	Verification of Compliance (Annex (c))
12		<p>EH9 - NEW WELL PUMP TESTS</p> <p>All new or rehabilitated wells to be added to the potable water distribution system shall first undergo a minimum of a 72-hour continuous pump test to determine the yield of the well. Unless otherwise approved by the Director of Environmental Health, the yield of the well shall be calculated by multiplying the 24-hour specific capacity by the available drawdown. If the apparent transmissivity decreases between the first 24 hours of the test and the end of the test, the 24-hour specific capacity shall be adjusted by multiplying the ratio of late-time transmissivity to early-time transmissivity. For the purposes of this condition, available drawdown is defined as two-thirds of the vertical distance from the static water level to the lowest perforations of the well. The pump tests shall be made no earlier than June 1 of each year and no later than the first significant rainfall event of the wet season. The pump test results shall be presented in a form for direct comparison to the criteria set forth in this condition. A representative of the Division of Environmental Health shall witness the pump tests. The applicant shall pay all associated fees to the Division of Environmental Health. (Environmental Health)</p>	Submit a report to EH for review and approval	CA Licensed Engineer /Owner/ Applicant	Prior to the issuance of a building permit	



WILLIAM B. POWELL
 23 LARRY OAKS, Carmel Valley, Ca 93924
 Phone 831-659-1597
 A.P. 009-081-0276

Items to be saved
 Items to be removed



A.P. 009-081-0276

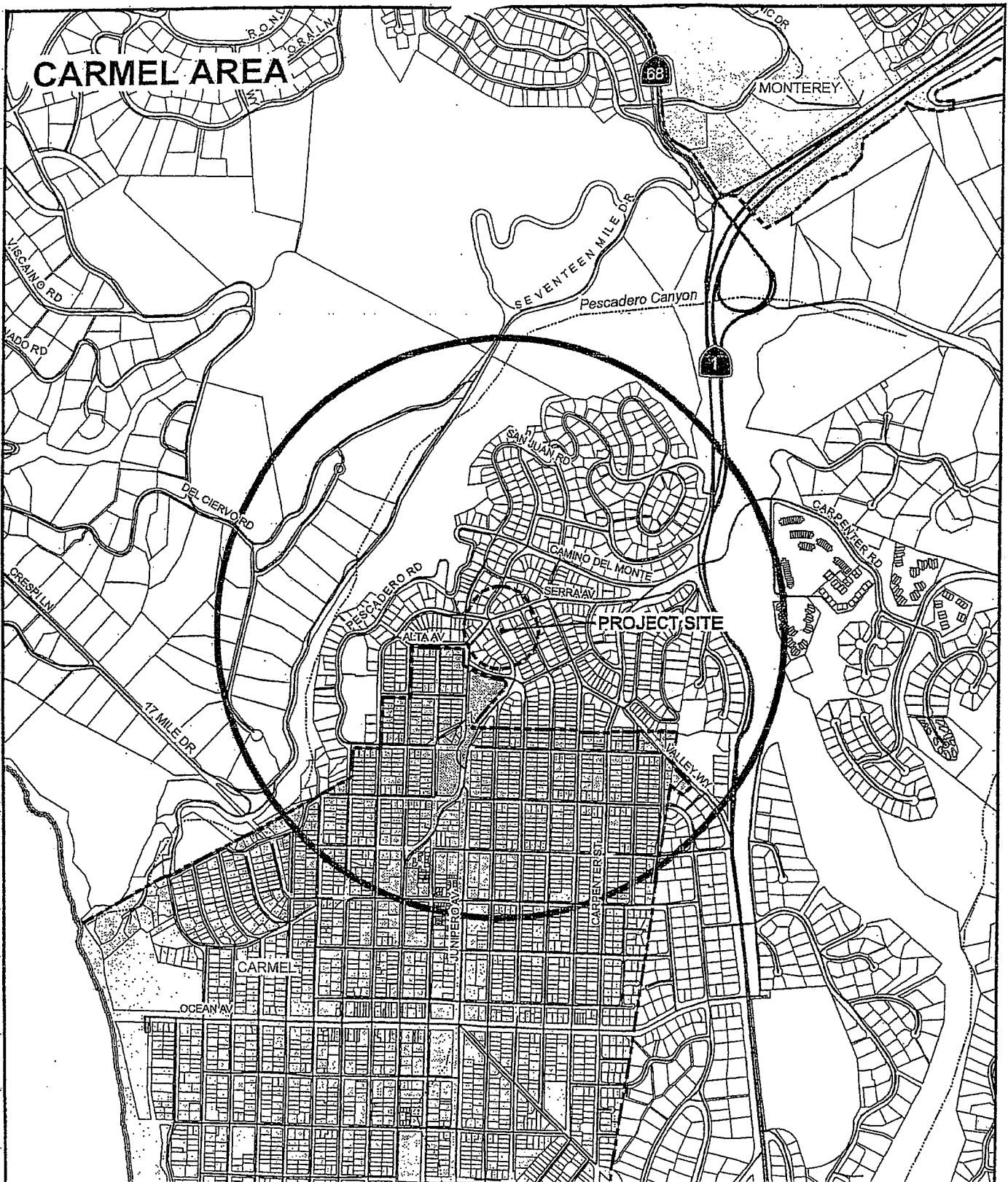
COVERAGES	
Lot	7,475 sq. ft.
House	1,439 sq. ft.
Garage	471 sq. ft.
Deck	444 sq. ft.
Coverage of Lot	
House and Garage	1,910 sq. ft.
Deck	444 sq. ft.
Driveway	1,121 sq. ft.
Remaining	4,500 sq. ft.
Percent	60.3%
Remaining	39.7%

PLAN

Water line to main
 Gas line to gas main
 Sewer waste to wastewater district line
 Electrical main to pole

Erosion controlled by straw degradable blankets by North American Green, placed at all new cut slopes.
 All slopes 25% or less.

LOT NUMBERED 14 BLOCK NUMBER 1572
 RECORDED MAY 1973 PAGE 22



APPLICANT: POWELL

APN: 009-081-027-000

FILE # PLN070074



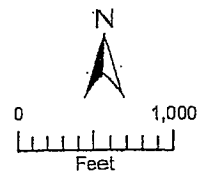
300' Limit



2500' Limit



City Limits



PLANNER: MONTANO

EXHIBIT E
POWELL PLN110366
VICINITY MAP

CARMEL AREA

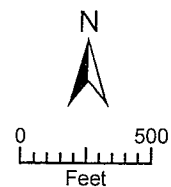


APPLICANT: POWELL

APN: 009-081-027-000

FILE # PLN110366

Water 2500' Limit 300' Limit City Limits



PLANNER: MONTANO

EXHIBIT F
POWELL PLN110366
PROJECT CORRESPONDENCE

MOZINGO & PATEL, A.P.C.
LAWYERS

4695 MACARTHUR COURT, ELEVENTH FLOOR
NEWPORT BEACH, CALIFORNIA 92660
EMAIL: newportcounsel@aol.com
TELEPHONE (949) 798-6115 - FACSIMILE (949) 798-5721
www.mozingoandpatel.com

GLEN R. MOZINGO, ESQ.
RETIRED

July 3, 2012

Richard LeWarner, Assistant Director
Environmental Health Services
168 West Alisal, Second Floor
Salinas, CA 93901

Re: *Guidelines Implementing General Plan Policies
and Addressing Concerns of Interim Ordinance
5160 and Its Extension Ordinances 5163 and 5176*

Dear Mr. LeWarner:

Having read the above-referenced guidelines implementing the general plan policies, and addressing concerns raised in the interim ordinances of 5160 as extended by ordinances 5163 and 5176, I have the following comments and observations which I believe are pertinent to the issues to be addressed and may clarify potential confusion in the application of policies that are certain to lead to further dispute and litigation.

Specifically, referencing the minimum lot size and well setbacks, I offer the following:

Lots Where the Geology is Fractured Rock:

Item No. 1:

This provision states that the lot shall have enough room for two (2) well sites and shall be a minimum of twenty (20) feet apart. I would propose that language be added to

NORTHERN CALIFORNIA
CARMEL-BY-THE-SEA
225 CROSSROADS BLVD., SUITE 133
CARMEL, CALIFORNIA 93923

FIRM ADMINISTRATOR
PAMELA AMIRALTY, CEP

MEMBERS
CALIFORNIA STATE BAR
NEW YORK STATE BAR
UNITED STATES FEDERAL BAR
INTERNATIONAL BAR
UNITED STATES TAX COURT
U.S. COURT OF INTERNATIONAL TRADE
LAW SOCIETY OF ENGLAND & WALES*

Richard LeWarner, Assistant Director
Environmental Health Services

Re: *Guidelines Implementing Genral Plan Policies
and Addressing Concerns of Interim Ordinance
5160 and Its Extension Ordinances 5163 and 5176*

July 3, 2012

Page 2

ensure that those potential secondary well sites fall within the requirement that they not intrude onto an adjacent property owner's property.

Item No. 2:

I believe this language is clear and is supported by a longstanding policy of the County of Monterey that establishes a protection barrier from potential contaminants that may be drawn, spilled or extracted from an adjacent property and provides minimum protection for the water to be drawn from the well.

Item No. 3:

This provision is clear and needs no modification.

Item No. 4:

This provision causes considerable concern. Item No. 4 sets out, in pertinent part, that "the well setback shall not cross property lines unless the well setback stays within a portion of the adjacent lot that has developmental restraints, such as steep slopes, easements front, back and side yard setbacks...." This provision would appear to ignore the purposes of setbacks or easements, which include, but are not limited to, an inadvertent taking of another's property and protection of drinking wells from pollution.

Under the language of Paragraph 4, we are telling an existing property owner that a setback requirement will be enforced against them. However, their neighbor may intrude on that setback to develop their property in a manner which heretofore has been prohibited. We are, in effect, saying to one property owner as you cannot use the property, by virtue of the fact that there are required setbacks, despite the fact that you will be required to pay taxes on that property, your neighbor can use that property and ignore the very setback restrictions that we impose upon you, thereby constituting an unlawful taking which the Board of Supervisor has specifically attempted to avoid. If logic escapes this argument, it is due to

Richard LeWarner, Assistant Director
Environmental Health Services

Re: *Guidelines Implementing Genral Plan Policies
and Addressing Concerns of Interim Ordinance
5160 and Its Extension Ordinances 5163 and 5176*

July 3, 2012

Page 3

the fact that the proposal as written, with respect to front, back and side yard setbacks is, in fact, illogical and is clearly designed to accommodate one homeowner over another.

Item No. 6:

This provision states that Rainwater Harvesting System storage tanks, filtration and purification systems should also be included in the twenty-five (25) foot setback so as to not create either a visual or potential contaminant intrusion on adjacent property.

Lots for Geologies Other than a Fractured Rock:

Item No. 9, which states in pertinent part, *"Well setbacks of proposed wells for domestic water systems may cross property lines if there is minimal impact to potential development of the adjacent lot(s) for those lots that lie within the water system service area ..."* This provision raises the specter of who it is that is going to make the determination as to "minimal impact to potential development of the adjacent lot." Without identifying who it is that makes that determination, we once again, invite ambiguity and litigation. Are the property owners going to be entitled to determine whether or not "the impact to potential development is minimal?" Is the adjacent property owner entitled to make that determination? Or is a government official entitled to make that determination? And, if so, what criteria will be utilized in making that determination. This language simply negates the wisdom of setting a specified setback distance for public health, safety and welfare, while at the same time protecting the interest of individual property owners.

I appreciate your consideration of these comments and trust that they will be accepted as they are intended. That is, to assist in minimizing ongoing disputes and to establish criteria which is clear, certain and unequivocal so that all parties, when either acquiring property, or attempting to develop property, will have a clear understanding of the conditions under which the property should be acquired or developed.

Lastly, the imposition of intrusion onto another's property, including those areas that contain either government easements or setbacks raises the issue of the taxability of that

Richard LeWarner, Assistant Director
Environmental Health Services

Re: *Guidelines Implementing Genral Plan Policies
and Addressing Concerns of Interim Ordinance
5160 and Its Extension Ordinances 5163 and 5176*

July 3, 2012

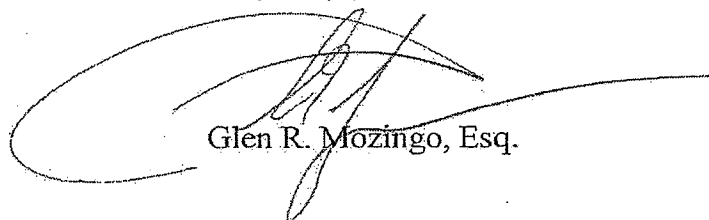
Page 4

property. If one property owner is permitted to intrude onto the property of another, even though that portion of the property may be subject to a setback for purposes of privacy lines, fire protection, etc., is that intruding property owner then subject to some portion of the property tax that has been assessed on the imposed upon parcel?

These are the types of issues that County counsel set out with great clarity in the Interim Urgency Ordinance No. 5160, which addressed issues which set out complaints received by existing property owners proposing that further study of possible regulations address these issues to ensure that adequate areas for access of drilling wells and maintaining those wells be maintained and to ensure that adequate areas for installation of storage and pressure system tanks are accommodated and specifically states under Section 10 of Ordinance No. 5160 under the heading, *"No taking of property intended."* That Section states, in pertinent part: *"Nothing in this Ordinance shall be interpreted to effect an unconstitutional taking of property of any person. If the Board of Supervisors determines, based on the specific evidence of the administrative record, that the application of one or more of the provisions of this Ordinance to a proposed project would effect an unconstitutional taking of private property, the Board shall disregard such provision or provisions to the extent necessary to avoid such unconstitutional taking."*

This language was adopted May 25, 2010, without a dissenting vote from the Monterey County Board of Supervisors. Clearly, the Monterey County Board of Supervisors was intending to ensure that an individual's property rights were not confiscated, compromised or taken in favor of an adjacent property's owner's desire to expand the existing rights they have for their own property.

Very truly yours,



Glen R. Mozingo, Esq.

GRM/sds

Richard LeWarner, Assistant Director
Environmental Health Services

Re: *Guidelines Implementing Genral Plan Policies
and Addressing Concerns of Interim Ordinance
5160 and Its Extension Ordinances 5163 and 5176*

July 3, 2012

Page 5

cc: Laura M. Lawrence, R.E.H.S., Planning Services Manager
Supervisor Fernando Armenta
Supervisor Louis R. Calcagno
Supervisor Jane Parker
Supervisor Dave Potter
Supervisor Simon Salinas
Board of Supervisors, County Clerk
John Ramirez, Director of Environmental Health Services
Nicki Fowler, Environmental Health Review Services
Charles J. McKee, Esq.
Wendy S. Strimling, Esq.
Benny Young, Director of Resource Management Agency
Mike Novo, Director of Planning
Carl Holm, Deputy Director of Resource Management Agency
Jacqueline Onciano, Zoning Administrator
Michael Rodriguez, Chief Building Official
Barbara Buikema, General Manager, Carmel Area Water District
Timothy McCormick
Ray von Dohren
Wayne Tando

MOZINGO & PATEL, A.P.C.
LAWYERS

4695 MACARTHUR COURT, ELEVENTH FLOOR
NEWPORT BEACH, CALIFORNIA 92660
EMAIL: newportcounsel@aol.com
TELEPHONE (949) 798-6115 · FACSIMILE (949) 798-5721
www.mozingoandpatel.com

GLEN R. MOZINGO, ESQ.
RETIRED

July 3, 2012

Laura M. Lawrence, R.E.H.S.
Planning Services Manager
Monterey County Resource Management Agency
168 West Alisal, Second Floor
Salinas, CA 93901

Re: *Powell Coastal Administrative Permit PLN110366*
(Amendment to PLC 070074) and PLN 110367
(Conversion from Test Well to Permanent Well)

Dear Ms. Lawrence:

Thank you for your communication of June 29, 2012. I invited the response in the event that the information that I had provided regarding the status of the above-referenced Permit Application was inaccurate. However, I must take exception to your statement that you are "notifying me" that my "representations" are not accurate. I do not believe that I made any "representations" but, rather, sought to ensure that the information that I had available to me was, in fact, accurate.

I was gratified to be informed that the Powell Application for an Amendment to the Coastal Administrative Permit (Powell/PLN070074) has not yet been approved. I am, of course, aware that a notice was sent out to neighboring property owners on May 30, 2012, to which I responded on June 4, 2012, thereby triggering the necessity for a public hearing as set out in that notice of May 30, 2012.

Needless to say, having now been advised that the Zoning Administrator will conduct a hearing on July 26, 2012, I will be present at the meeting for purposes of ensuring that all

F:\WORK\Clients\Carmel Woods HOA\Powell Property\Lawrence - Powell Coastal Administrative Permit.wpd

NORTHERN CALIFORNIA
CARMEL-BY-THE-SEA
225 CROSSROADS BLVD., SUITE 133
CARMEL, CALIFORNIA 93923

FIRM ADMINISTRATOR
PAMELA AMIRALTY, CEP

MEMBERS
CALIFORNIA STATE BAR
NEW YORK STATE BAR
UNITED STATES FEDERAL BAR
INTERNATIONAL BAR
UNITED STATES TAX COURT
U.S. COURT OF INTERNATIONAL TRADE
LAW SOCIETY OF ENGLAND & WALES*

Laura M. Lawrence, R.E.H.S.

Planning Services Manager

Re: *Powell Coastal Administrative Permit PLN110366*

(Amendment to PLC 070074) and PLN 110367

(Conversion from Test Well to Permanent Well)

July 3, 2012

Page 2

relevant facts are taken into consideration when considering both the Application for Amendment and the Application to Convert the Test Well into a Permanent Well under PLN110367.

I do appreciate your explanation as to how the Coastal Administrative Permit has been extended from its original expiration date of June 11, 2010, as a result of the Board of Supervisors' March 16, 2012 action amending the zoning ordinance to provide for an automatic twenty-four (24) month extension. Of course, I had no notice that the applicant had applied for an amendment to the Coastal Administrative Permit on January 19, 2012, as no public notice was posted or mailed.

I assume from your letter that the "processing of the Application for Amendment" has taken a period of approximately six (6) months, thereby staying the expiration of the Coastal Administrative Permit.

I do appreciate the confirmation that the test well was drilled in a location not authorized by the original Coastal Administrative Permit, which, of course, is the basis upon which I raise my objections, in that the location the well was drilled intrudes upon my property creating an unrecorded easement for which the Waste Water Resources Agency has suggested may require the recordation of an easement, thereby wrongfully taking property upon which I pay taxes and interfering with any development I wish to exercise upon my property.

As I am certain you are aware, County Counsel in the interim ordinances has addressed that issue at great length, specifically setting out in Ordinance No. 5163 issues pertaining to the "Impact on Neighbors" under Item G5, "Impact to Urbanized Areas" under Item G7(a) and (c) and the setting out that the interim ordinance under Section 4(c), the following:

"This Ordinance exempts applicants who have constructed an authorized test well on a parcel in the Coastal Unincorporated

Laura M. Lawrence, R.E.H.S.

Planning Services Manager

Re: *Powell Coastal Administrative Permit PLN110366*

(Amendment to PLC 070074) and PLN 110367

(Conversion from Test Well to Permanent Well)

July 3, 2012

Page 3

area of the County prior to May 25, 2010. For such applicants this Ordinance does not prohibit the County from accepting and processing applications for discretionary development entitlement to convert the test well to a production well, provided that the test well was already constructed prior May 25, 2010 in accordance with all permits issued by the County of Monterey."

As you have stated in your response to my letter, the Powell test well was not constructed in accordance with all permits issued by the County of Monterey prior to May 25, 2010. Therefore, it would appear that the action being sought to amend a permit that was not in compliance with the permits issued by the County of Monterey would be contrary to both the letter and intent of the Ordinance No. 5163. This intention is set out, once again, under Section 4, "Limitations on Well Permits," Introductory Paragraph and subpart (b), which states, in pertinent part:

"This Ordinance does not prohibit owners who have active, unexpired well construction permits through the Monterey County Health Department prior to May 25, 2010, from proceeding to construct wells as authorized under the permit."
[Emphasis added.]

You will also note the provision under Ordinance No. 5163, Section 10, under the heading: "No Taking of Property Intended," sets out the concern of the Board of Supervisors that one property owner should not be permitted an unauthorized taking of the property of another simply to accommodate the applicant, particularly in light of the fact that the applicant has summarily ignored the conditions of the permit.

Further, under Section 10, "No Taking of Property Intended," the Interim Ordinance sets out that nothing in the Ordinance shall be interpreted to effect an unconstitutional taking of property of another person. If the Board of Supervisors determines, based on specific

Laura M. Lawrence, R.E.H.S.

Planning Services Manager

Re: *Powell Coastal Administrative Permit PLN110366*

(Amendment to PLC 070074) and PLN 110367

(Conversion from Test Well to Permanent Well)

July 3, 2012

Page 4

evidence in the administrative record, that the application of one or more of the provisions of this Ordinance to a proposed project would effect an unconstitutional taking of private property, the Board shall disregard such provision or provisions to the extent necessary to avoid such unconstitutional taking."

I do appreciate your calling to my attention the draft Ordinance and related initial study to amend Chapter 15.08 of the Monterey County Code relating to the regulation of water wells. I have obtained a copy of that proposed regulation and have made my comments with respect to that proposed regulation and do hereby request notification of the date and time in which that proposed draft ordinance will be considered by the Monterey County Board of Supervisors.

With respect to your comments that "*We do not agree with your statement of the facts listed in your item (4)*" and that "*The staff report for the July 26, 2012 Zoning Administrative Hearing will provide the history and a chronology of events*" are somewhat troubling in that no one from your staff has communicated with me regarding conversations that I had with the applicant both prior to and during the well drilling process, which would appear, on its face, to leave a gaping whole in the "chronology of events" as I have first-hand knowledge with respect to the applicant's intentions and actions, despite the fact that he was well aware that he was in violation of the permit authorizing the drilling of a well in a specified location.

Additionally, the information regarding the applicant's concern that placing the well, where authorized, would interfere with his driveway, and therefore the applicant was justified in placing the well in an unauthorized location, was given to me by your Assistant Planning Manager Ramon Montano.

Laura M. Lawrence, R.E.H.S.

Planning Services Manager

Re: *Powell Coastal Administrative Permit PLN110366*

(Amendment to PLC 070074) and PLN 110367

(Conversion from Test Well to Permanent Well)

July 3, 2012

Page 5

I will, of course, accept your invitation to express my views at the Zoning Administrative Hearing and will look forward to the opportunity of doing so.

Sincerely,



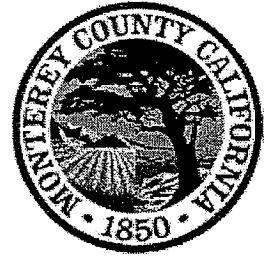
Glen R. Mozingo, Esq.

GRM/sds

cc: Richard LeWarner, Assistant Director of Environmental Health Services
Supervisor Fernando Armenta
Supervisor Louis R. Calcagno
Supervisor Jane Parker
Supervisor Dave Potter
Supervisor Simon Salinas
Board of Supervisors, County Clerk
John Ramirez, Director of Environmental Health Services
Nicki Fowler, Environmental Health Review Services
Charles J. McKee, Esq.
Wendy S. Strimling, Esq.
Benny Young, Director of Resource Management Agency
Mike Novo, Director of Planning
Carl Holm, Deputy Director of Resource Management Agency
Jacqueline Onciano, Zoning Administrator
Michael Rodriguez, Chief Building Official
Barbara Buikema, General Manager, Carmel Area Water District
Timothy McCormick
Ray von Dohren
Wayne Tando

MONTEREY COUNTY

RESOURCE MANAGEMENT AGENCY



PLANNING DEPARTMENT, Mike Novo, Director

168 W. Alisal St., 2nd Floor
Salinas, CA 93901

(831) 755-5025
FAX (831) 757-9516

<http://www.co.monterey.ca.us/planning/>

Via e-mail (newportcounsel@aol.com) and mail

June 29, 2012

Glen R. Mozingo, Esq.
Mozingo & Patel, A.P.C.
4695 MacArthur Court, Eleventh Floor
Newport Beach, CA 92660

RE: POWELL COASTAL ADMINISTRATIVE PERMITS (PLN110366 (Amendment to PLN070074) AND PLN110367 (Conversion from test well to permanent well))

Dear Mr. Mozingo:

In your letter of June 26, 2012, you requested to be contacted immediately if any of the representations you made in the letter are inaccurate. This letter is to notify you that your representations are not accurate. For your information, we provide the following information relative to the four items listed in your June 26 letter:

- 1) The Powell application for an amendment to the Coastal Administrative Permit (Powell/PLN070074) has not yet been approved. Pursuant to section 20.76.115.A of Title 20 (coastal zoning ordinance) of the Monterey County Code, on or about May 30, 2012, a "Notice of Pending Coastal Administrative Permit" for the Powell application for the proposed amendment to the Coastal Administrative Permit was sent to neighbors within 300 feet of the proposed project. On June 11, 2012, the Planning Department received an e-mail from Steve Dallas with your June 4, 2012 letter attached requesting that the permit be set for public hearing. Per sections 20.04.030.F and 20.76.115 of Title 20, the Director of Planning thereupon designated the Zoning Administrator as the appropriate authority to consider the amendment. The Planning Department has scheduled the public hearing before the Zoning Administrator on July 26, 2012. The Planning Department also plans to schedule the separate Powell application to convert the test well to a permanent well (PLN110367) for the same day at the Zoning Administrator. We will send you a copy of the public hearing notice for both applications.
- 2) The Powell Coastal Administrative Permit (PLN070074) has not expired. The permit was approved administratively on June 11, 2008. The original expiration date of the permit was June 11, 2010. Monterey County Ordinance No. 5155, adopted by the Board of Supervisors on March 16, 2010, amended the zoning ordinance to provide for an automatic 24 month extension to discretionary permits approved between January 1, 2006 and January 1, 2009 that had not expired as of that date. Thus, the permit was

automatically extended to June 11, 2012. The applicant applied for an amendment to the Coastal Administrative Permit on January 19, 2012. During the processing of the application for amendment, the application stays the expiration of Coastal Administrative Permit PLN070074.

The test well was drilled in a location not authorized by the original Coastal Administrative Permit. An amendment to the Coastal Administrative Permit is required to modify the location of the test well. The applicant applied for an amendment to the Coastal Administrative Permit on January 19, 2012.

- 3) A draft ordinance, and the related initial study, to amend Chapter 15.08 of the Monterey County Code relating regulation of water wells are circulating for public review. The public comment period on the initial study is from June 4, 2012 to July 6, 2012. A link to the initial study and the draft ordinance can be found on the Planning Department main web page at www.co.monterey.ca.us/planning. The Board of Supervisors has not yet adopted the ordinance.
- 4) We do not agree with your statement of the facts listed in your item (4). The staff report for the July 26, 2012 Zoning Administrator hearing will provide the history and a chronology of events. You are welcome to express your views at the Zoning Administrator hearing.

If you have any questions, please e-mail me at lawrencel@co.monterey.ca.us or call (831) 755-5148.

Sincerely,

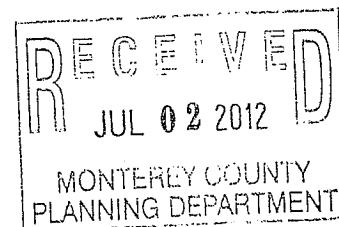


Laura M. Lawrence, R.E.H.S.
Planning Services Manager

cc: Supervisor Fernando Armenta (via e-mail)
Supervisor Louis R. Calcagno (via e-mail)
Supervisor Jane Parker (via e-mail)
Supervisor Dave Potter (via e-mail)
Supervisor Simon Salinas (via e-mail)
Board of Supervisors, County Clerk (via e-mail)
John Ramirez, Director of Environmental Health Services (via e-mail)
Richard LeWarne, Assistant Director of Environmental Health Services (via e-mail)
Nicki Fowler, Environmental Health Review Services
Charles J. McKee, Esq. (via e-mail)
Wendy S. Strimling, Esq. (via e-mail)
Benny Young, Director of Resource Management Agency (via e-mail)
Carl Holm, Deputy Director of Resource Management Agency (via e-mail)
Mike Novo, Director of Planning (via e-mail)
Jacqueline Onciano, Zoning Administrator (via e-mail)
Michael Rodriguez, Chief Building Official (via e-mail)
Barbara Buikema, General Manager, Carmel Area Wastewater District (via U.S. Mail)

MOZINGO & PATEL, A.P.C.
LAWYERS

4695 MACARTHUR COURT, ELEVENTH FLOOR
NEWPORT BEACH, CALIFORNIA 92660
E-MAIL: newportcounsel@aol.com
TELEPHONE (949) 798-6115 • FACSIMILE (949) 798-5721
www.mozingoandpatel.com



GLEN R. MOZINGO, ESQ.
RETIRED

June 26, 2012

NORTHERN CALIFORNIA
CARMEL-BY-THE-SEA
225 CROSSROADS BLVD., SUITE 133
CARMEL, CALIFORNIA 93923

FIRM ADMINISTRATOR
PAMELA AMIRAULT, CEP

MEMBERS
CALIFORNIA STATE BAR
NEW YORK STATE BAR
UNITED STATES FEDERAL BAR
INTERNATIONAL BAR
UNITED STATES TAX COURT
U.S. COURT OF INTERNATIONAL TRADE
LAW SOCIETY OF ENGLAND & WALES*

Transmitted via Certified Mail - Return Receipt Requested
7010 3090 0002 2322 8052

Ramon Montano, Assistant Planner
Monterey County Planning Department
168 West Alisal Street
Second Floor
Salinas, CA 93901

Re: *Notice of Pending Coastal Administrative Permit*
Project File No. PLN110367
Project Title: Powell, William Dan
Project Location: 3072 Serra Avenue, Carmel, California

Dear Mr. Montano:

This will confirm our telephone conversation of this date in which you advised that the zoning administrative hearing regarding the above-referenced matter will be heard on July 26, 2012, and that you will inform me as to the time of that hearing.

This will further confirm the following:

- (1) The Notice of Pending Coastal Administrative Permit that was recently sent out stating that the previously approved Coastal Administrative Permit PLN070074 has been Amended Under PLN110366 was in error and that, in fact, no such amendment has been approved;

F:\WORK\Clients\Carmel Woods HOA\Powell Property\Montano - Amended Notice.wpd

Ramon Montano, Assistant Planner
Monterey County Planning Department
Re: *Notice of Pending Coastal Administrative Permit*
June 26, 2012
Page 2

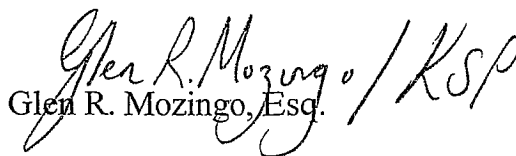
- (2) That the original permit for the drilling of a test well that was issued by the authorizing authorities in a specified site location expired two years after its issuance and has **not** been renewed, although a wellhead was placed in an area not authorized by the County;
- (3) That the pending ordinance relating to wells drilled in the Carmel Woods area has not, as of this date, been drafted or approved by the Monterey County Board of Supervisors; and,
- (4) That the original well site location authorized by the County would have interfered with the driveway of the proposed home to be built on the property site, and therefore, was unacceptable to the owner, despite the fact that the present unauthorized wellhead location intrudes upon my property driveway by some fifteen (15) feet.

Please notify me immediately if any of the representations made in this letter are inaccurate or do not reflect the content of our conversation of June 26, 2012 at 9:00 a.m.

Assuming that you concur with the representations contained in this correspondence, I will make the assumption that your "Notice of Pending Coastal Administrative Permit" will be amended to reflect that, in fact, the previously approved permit number PLN070074 has not, in fact, been amended.

I look forward to your prompt response.

Respectfully Submitted,


Glen R. Mozingo, Esq.

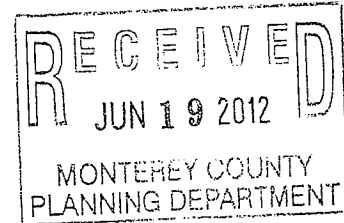
GRM/sds

Ramon Montano, Assistant Planner
Monterey County Planning Department
Re: *Notice of Pending Coastal Administrative Permit*
June 26, 2012
Page 3

cc: Richard LeWarner
Supervisor Fernando Armenta
Supervisor Louis R. Calcagno
Supervisor Jane Parker
Supervisor Dave Potter
Supervisor Simon Salinas
Board of Supervisors, County Clerk
John Ramirez
Charles J. McKee, Esq.
Wendy S. Strimling, Esq.
Mike Novo, Zoning Administrator
Carl Holm
Timothy McCormick
Ray von Dohren
Wayne Tando
Environmental Health Review Services

MOZINGO & PATEL, A.P.C.
LAWYERS

4695 MACARTHUR COURT, ELEVENTH FLOOR
NEWPORT BEACH, CALIFORNIA 92660
E-MAIL: newportcounsel@aol.com
TELEPHONE (949) 798-6115 • FACSIMILE (949) 798-5721
www.mozingoandpatel.com



GLEN R. MOZINGO, ESQ.
RETIRED

June 12, 2012

NORTHERN CALIFORNIA
CARMEL-BY-THE-SEA
225 CROSSROADS BLVD., SUITE 133
CARMEL, CALIFORNIA 93923

FIRM ADMINISTRATOR
PAMELA AMIRAULT, CEP

MEMBERS
CALIFORNIA STATE BAR
NEW YORK STATE BAR
UNITED STATES FEDERAL BAR
INTERNATIONAL BAR
UNITED STATES TAX COURT
U.S. COURT OF INTERNATIONAL TRADE
LAW SOCIETY OF ENGLAND & WALES*

Transmitted via Certified Mail - Return Receipt Requested
7010 3090 0002 2322 8038

Ramon Montano, Assistant Planner
Monterey County Planning Department
168 West Alisal Street
Second Floor
Salinas, CA 93901

Re: *Notice of Pending Coastal Administrative Permit*
Project File No. PLN110367
Project Title: Powell, William Dan
Project Location: 3072 Serra Avenue, Carmel, California

Dear Mr. Montano:

Pursuant to the above-referenced Notice of Pending Coastal Administrative Permit, please be advised that I object to the proposed action to allow the conversion of a test well located at the above-referenced property.

I further object to the applicant's mischaracterization that the referenced test well was "approved" under PLN0700074 and amended under PLN110366 in a further attempt to overtly mislead the Planning Department as well as the County of Monterey.

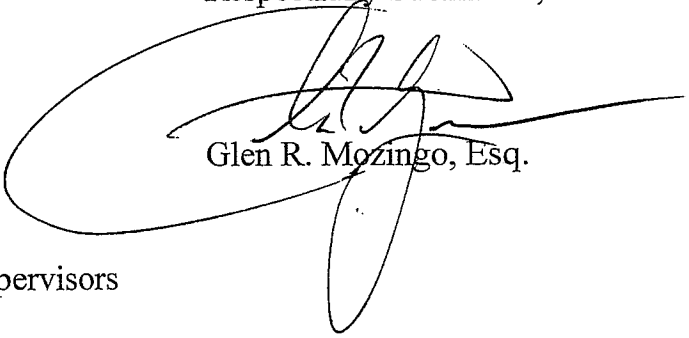
F:\WORK\Clients\Carmel Woods HOA\Powell Property\Montano - Objection to Notice.wpd

Ramon Montano, Assistant Planner
Monterey County Planning Department
Re: *Notice of Pending Coastal Administrative Permit*
June 12, 2012
Page 2

This well was **NOT** approved in the location that it was drilled and the Board of Supervisor has previously addressed this issue directly with the representatives of Mr. Powell through their legal counsel by affirming to them that the well was intentionally placed in a location not authorized by the County or any other administrative or regulatory authority. The present location of the wellhead intrudes upon both the twenty-five (25) foot and fifty (50) foot set back requirements. Therefore, creating a unauthorized taking and easement onto the property that I own which is adjacent to the Powell Property.

Therefore, it is my informed opinion that the requested conversion should not be granted and I request a public hearing regarding this matter. Please advise of the date on which that hearing will be set. I will be out of the State for the period July 7, 2012 through July 15, 2012.

Respectfully Submitted,



Glen R. Mozingo, Esq.

GRM/sds

Enc. (3) - Letters to Board of Supervisors

Montano, Ramon x5169

From: steve dallas [sgdallas@yahoo.com]
Sent: Monday, June 11, 2012 8:09 PM
To: Holm, Carl P. x5103; 100-District 5 (831) 647-7755; Novo, Mike x5192
Cc: 100-District 4 (831) 883-7570; jason burnett; KKTalm@aol.com; Lawrence, Laura x5148; Montano, Ramon x5169; 100-District 1 (831) 647-7991; 100-District 2 (831) 755-5022; 100-District 3 (831) 385-8333; Ramirez, John x4539; LeWarne, Richard x4544
Subject: Fw: Planning Commission Letter 6/11/12 8pm "Carmel Woods Wells"

Mr Holm and Mr Novo,

I also am very opposed and object 100% to this "WELL" project as stated in Mr Mozingo's letter, PLN 110366 and PLN 070074, lot location directly across from the "statue" coming in to Carmel by the Sea on the SE corner of Serra and Camino del Monte Carmel, CA

"Wells" in Carmel Woods are just terrible planning and the lot sizes were never intended to have or accomodate "wells" on them.

I wanted to make sure you were aware of Mr Mozingo's letter for the record.

Also please have this email added to the record.

Thank you as always,
 Steve Dallas

c.c. Supervisor Potter
 c.c. Supervisor Parker
 c.c. Supervisor Salinas
 c.c. Supervisor Calcagno
 c.c. Supervisor Armenta
 c.c. Carmel Mayor Burnett
 c.c. Carmel Vice Mayor Talmage

--- On Mon, 6/11/12, newportcounsel@aol.com <newportcounsel@aol.com> wrote:

From: newportcounsel@aol.com <newportcounsel@aol.com>
 Subject: Planning Commission Letter
 To: sgdallas@yahoo.com
 Date: Monday, June 11, 2012, 11:14 AM

06/12/2012

Dear Steve,

Here is a copy of the letter you requested.

Best regards,
Susan D. Scott, Paralegal
Mozingo & Patel, A.P.C.
Lawyers
4695 MacArthur Court
Eleventh Floor
Newport Beach, CA 92660
Telephone: (949) 798-6115
Facsimile: (949) 798-5721
www.MozingoandPatel.com

CONFIDENTIALITY NOTE:

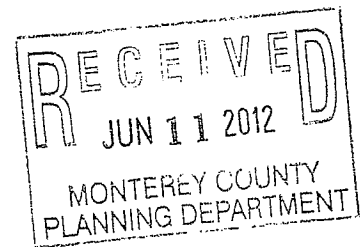
This message is intended for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this information is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this email communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and destroy all copies from your computer system.

Thank You

06/12/2012

MOZINGO & PATEL, A.P.C.
LAWYERS

4695 MACARTHUR COURT, ELEVENTH FLOOR
NEWPORT BEACH, CALIFORNIA 92660
E-MAIL: newportcounsel@aol.com
TELEPHONE (949) 798-6115 • FACSIMILE (949) 798-5721
www.mozingoandpatel.com



GLEN R. MOZINGO, ESQ.
RETIRED

June 4, 2012

NORTHERN CALIFORNIA
CARMEL-BY-THE-SEA
225 CROSSROADS BLVD., SUITE 133
CARMEL, CALIFORNIA 93923

FIRM ADMINISTRATOR
PAMELA AMIRAULT, CEP

MEMBERS
CALIFORNIA STATE BAR
NEW YORK STATE BAR
UNITED STATES FEDERAL BAR
INTERNATIONAL BAR
UNITED STATES TAX COURT
U.S. COURT OF INTERNATIONAL TRADE
LAW SOCIETY OF ENGLAND & WALES*

***Transmitted via Certified Mail - Return Receipt Requested
7007 1490 0003 8702 6486***

Ramon Montano, Assistant Planner
Monterey County Planning Department
168 West Alisal Street
Second Floor
Salinas, CA 93901

Re: *Notice of a Minor and Trivial Amendment (PLN110366)
to Previously Approved Coastal Administrative Permit (PLN070074)
(Carmel Area Land Use Plan, Coastal Zone)*

Dear Mr. Montano:

Pursuant the Notice of a Minor and Trivial Amendment (PLN110366) referencing Previously Approved Coastal Administrative Permit (PLN070074); Carmel Area Land Use Plan, Coastal Zone, please be advised that I do object to an Amendment to the Coastal Administrative Permit granted to William Dan Powell (PLN070074) in accordance with Title 20 (Zoning) Section 20.26.115.

I do not perceive this Amendment to be "trivial" as this wellhead location was specifically ruled upon by the Monterey County Board of Supervisors as being placed in a location which, in fact, was not authorized by the Planning Department. It, in fact, was

F:\WORK\Clients\Carmel Woods HOA\Powell Property\Montano - Objection to Proposed Amendment.wpd

Ramon Montano, Assistant Planner
Monterey County Planning Department

Re: *Notice of a Minor and Trivial Amendment (PLN110366)*
to Previously Approved Coastal Administrative Permit (PLN070074)
(Carmel Area Land Use Plan, Coastal Zone)

June 4, 2012

Page 2

located at a position on the lot which was prohibited and does not satisfy the twenty-five (25) foot set back from adjacent property.

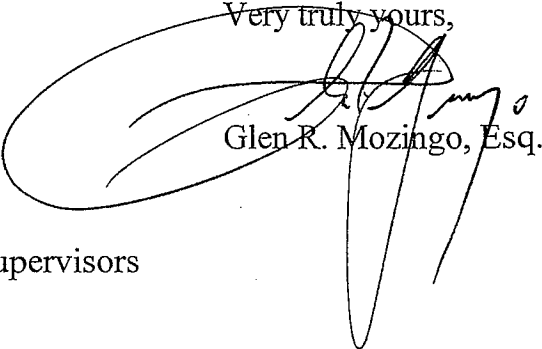
I am the owner of the adjacent property upon which this wellhead set back intrudes by some fifteen (15) feet.

As the County Board of Supervisors has already addressed the issue as to whether or not this wellhead has been property located under the previously authorized permit, this attempt to "back door" the issue is nothing more than an attempt to thwart the intentions of the County Board of Supervisors and all regulatory agencies that have previously addressed this issue. (Please see attached correspondence.)

As you will observe, the file on this matter is rather voluminous and contains each and every argument which I intend to raise at the time of public hearing. Therefore, I incorporate those documents in this objection by reference.

Please provide me with the dates and times on which a public hearing will be set to address this issue.

Very truly yours,


Glen R. Mozingo, Esq.

GRM/sds

Enc. (3) - Letters to Board of Supervisors

THE MOZINGO LAW FIRM
A PROFESSIONAL CORPORATION

4695 MACARTHUR COURT
ELEVENTH FLOOR
NEWPORT BEACH, CALIFORNIA 92660
E-MAIL: newportcounsel@aol.com
TELEPHONE (949) 798-6115 · FACSIMILE (949) 798-5721

GLEN R. MOZINGO, ESQ.
MANAGING PARTNER

NORTHERN CALIFORNIA

CARMEL
225 CROSSROADS BLVD., SUITE 133
CARMEL, CALIFORNIA 93923

FIRM ADMINISTRATOR

PAMELA AMIRALTY, CEP

MEMBERS

CALIFORNIA STATE BAR ASSOC.
NEW YORK STATE BAR ASSOC.
UNITED STATES FEDERAL BAR ASSOC.
INTERNATIONAL BAR ASSOC.
LAW SOCIETY OF ENGLAND & WALES

June 24, 2010

Transmitted via Email and U.S. Mail
district4@co.monterey.ca.us

Supervisor Jane Parker
2616 First Avenue
Marina, CA 93933

Re: *New Well Ordinance*
Powell Family Well

Dear Supervisor Parker:

Pursuant to the recent public notice setting out the terms and conditions under which matters may be appealed and the requirement that no matter shall be given consideration that has not been raised at the initial decision making process, I offer the following supplemental document which I request be placed into the record as it pertains to the urgency ordinance.

It has been called to my attention by Mr. Richard LeWarne that my initial understanding as to the modification that is being proposed by County Staff to the Urgency Ordinance which was passed on May 25, 2010 was a misunderstanding as a result of a communication between myself and Wendy Striming, Deputy County Counsel.

It has now been clarified that the County Staff proposes to carve out a "special exception" for the Powell property. It has been represented to me that the Powell Property is the only property in Monterey County that has placed a well in an area which was not permitted. It has also been represented to me by Mr. LeWarne that this well was drilled

Supervisor Jane Parker

Re: *New Well Ordinance*
Powell Family Well

June 24, 2010

Page 2

based on a misrepresentations by the Powell family that they had received approval from another agency to move the well location, which turned out to be a fabrication.

The facts, as we now know them to be, are as follows:

1. Mr. Powell previously obtained a well permit allowing for drilling of a test well on his property in a location approved by the California Coastal Commission and County of Monterey.
2. Had Mr. Powell complied with that permit as issued, this issue would be moot, provided that the placement of the well on his lot allowed for the minimum 25 foot setback.
3. Neither the County nor anyone else influenced Mr. Powell's sole decision to overtly disregard the provisions of that permit and drill the well in an improper location.
4. Neither the County nor anyone else influenced Mr. Powell's sole decision to fraudulently misrepresent to any agency that he had obtained permission to relocate the well, such that it would unlawfully encroach on a neighbor's property resulting in an unconstitutional and unlawful taking of property rights, including, but not limited to, surface rights, subsurface rights, water rights, and mineral rights, not to mention the conflict arising from deed restrictions and creating an uncompensated easement.
5. It was specifically brought to Mr. Powell's attention, *prior* to his commencing the drilling of the well that the well was not being legally drilled, to which Mr. Powell responded that he could do what he wanted and did not have to comply with the permit process.
6. Since the Powell family has already shown their total disregard of the rules and regulations surrounding the issuance of the permit process (previously provided to them allowing for drilling of a test well on his property in a

Supervisor Jane Parker

Re: *New Well Ordinance*
Powell Family Well

June 24, 2010

Page 3

location approved by the County), it defies logic, common sense and economy to expend County funds or reserves to accommodate a single lot owner in order to award his complete disregard of the rules followed by others. To do so would reject the concept of fairness to the remaining individuals who have followed all the rules, legally applied for permits, and thereafter proceeded according to the permit process.

7. The protracted litigation that will surely result on the bases outline above will cause heavy economic burdens to the County, with no benefit to the County, should the special exception be granted.

Therefore, I once again, urge the Supervisors to extend the urgency ordinance as originally passed and to avoid even the temptation of accommodating those who have effectively thumbed their nose at the rules and regulations set out by the County to protect the rights of all citizens in Monterey County as it pertains to their respective property rights.

I am also informed that the Powell property well location falls within the 1,000 foot parameter of the Chopin well which has now been approved for conversion to a production well, giving further credence to the argument that to carve out a special exception for an individual property owner under these circumstances would reflect an issue of selective enforcement of administrative law.

I am well aware that the Powell family intends to re-apply for the well in the permitted location; however, that application will not negate the exposure to the litigation that is certain to follow. The indemnification provisions that the County requires each homeowner to provide in the event of litigation in these types of matters, while well advised, is of little consequence to the County in the event that the homeowner does not have the economic wherewithal to collateralize that indemnification.

As I have repeatedly stated, this Board and its predecessors have a long history of protecting the interest of the general public by setting out reasonable rules, regulations and authorities that must be complied with to protect the interests of all citizens. The proposed carve-out of this particular parcel, because of a circumstance which arises not as a result of

THE MOZINGO LAW FIRM
A PROFESSIONAL CORPORATION

Supervisor Jane Parker

Re: *New Well Ordinance*
Powell Family Well

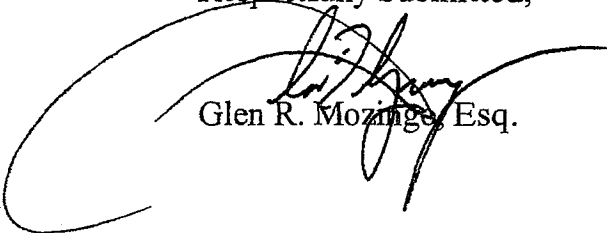
June 24, 2010

Page 4

County conduct but the deliberate and misleading conduct of an individual who chose to disregard the attempt of the County to protect the general public safety, welfare, health and property rights of all, would, in my opinion, constitute economic folly.

Consequently, I urge the Board of Supervisors to reaffirm its initial approved language of the Urgency Ordinance of May 25, 2010, and thereby avoid the unfortunate circumstance which is likely to follow as a result of a single citizens disregard for the law.

Respectfully Submitted,



Glen R. Mozingo, Esq.

GRM/sds

THE MOZINGO LAW FIRM
A PROFESSIONAL CORPORATION

4695 MACARTHUR COURT
ELEVENTH FLOOR
NEWPORT BEACH, CALIFORNIA 92660
E-MAIL: newportcounsel@aol.com
TELEPHONE (949) 798-6115 · FACSIMILE (949) 798-5721

GLEN R. MOZINGO, ESQ.
MANAGING PARTNER

NORTHERN CALIFORNIA

CARMEL
225 CROSSROADS BLVD., SUITE 133
CARMEL, CALIFORNIA 93923

FIRM ADMINISTRATOR

PAMELA AMIRAULT, CEP

MEMBERS

CALIFORNIA STATE BAR ASSOC.
NEW YORK STATE BAR ASSOC.
UNITED STATES FEDERAL BAR ASSOC.
INTERNATIONAL BAR ASSOC.
LAW SOCIETY OF ENGLAND & WALES

June 18, 2010

Transmitted via Email and U.S. Mail
district4@co.monterey.ca.us

Supervisor Jane Parker
2616 First Avenue
Marina, CA 93933

Re: *New Well Ordinance*
Powell Family Well

Dear Supervisor Parker:

First of all, permit me to express my gratitude on behalf of myself and the majority of homeowners in the Carmel Woods Neighborhood Association for the Board's willingness to reconsider the advisability of drilling wells on small urban lots given the new data and research that has been provided to the Board and its staff.

I also appreciate County Counsel's willingness to incorporate and recommend to the Board language in the new ordinance which avoids the unintended consequence of permitting the grandfathering of wells that were drilled in contravention to the California Coastal Commission and County of Monterey permit process.

Supervisor Jane Parker

Re: *New Well Ordinance*
Powell Family Well

June 18, 2010

Page 2

However, in a telephone conversation with County Counsel, Wendy Strimling, Esq., on June 16, 2010, I was informed that County Staff may be considering a recommendation to the Board to extend the grandfathering of test wells to include wells that have not been drilled and for which applications are submitted to the County after May 25, 2010 but prior to the urgency ordinance becoming finalized including inactive well permits pending prior to the urgency ordinance becoming finalized. (As you are aware, the ordinance already exempts wells that have an active, unexpired well construction permit prior to May 25, 2010.) Quite simply, this action would open the flood gate for anyone wishing to obtain a well to make sure the application reaches the County prior to the urgency ordinance becoming finalized and thereby deluting the effect of the urgency ordinance.

Not only is there no legal or political basis to support such an extension of the grandfathering clause, but to do so would cause the Board of Supervisors to ignore the basis provided to the Supervisors for initiating the urgency ordinance in the first place, specifically concerns over the following:

1. Protection of public health, safety and welfare;
2. Sustainability of wells drilled in fractured granite;
3. Limited water storage capacity of fractured granite;
4. Viability of wells drilled in fractured granite;
5. Geological changes in fractured patterns;
6. Inability to relocate wells in the likely event of well failure on small urban lots;
7. Limited recharge area;
8. Potential of one property owner's well extracting the water beneath adjacent lots without authorization to do so to the detriment of the adjacent property owner;
9. The impact of drought;
10. Impact on neighbors due to insufficient setbacks and consequential unauthorized and illegal "taking" of property;
11. The relation of wells to wastewater disposal and proximity to other wells increasing the probability of well failures;
12. Impacts on urbanized areas;

Supervisor Jane Parker

Re: *New Well Ordinance*
Powell Family Well

June 18, 2010

Page 3

13. Failure of evaluate underlying water supply and minimum adequate lot size for onsite wells when lots within the proposed ordinance Study Area were created;
14. The potential of having to truck in water (as evidenced by the Rock Ridge experience) to locations of failed wells and the consequential environmental impact of such action; and,
15. The creation of conditions of public nuisance.

Until additional study and revision of the County's current regulations, the ordinance as approved May 25, 2010, should become final and be extended and the only exemptions to the ordinance should remain as outlined therein:

"...test wells which have already been constructed prior to May 25, 2010, [within the parameters of the permit process] replacement wells, emergency wells, well destruction, well repairs, and wells that have *an active, unexpired well construction permit prior to May 25, 2010.*" **Emphasis Added.**

"... owners who have an active, unexpired well construction permit from the Monterey County Health Department prior to May 25, 2010 from proceeding to construct the well as authorized under the [California Coastal Commission and County of Monterey] permit [process]." **Emphasis Added.**

I also wish to call to your attention a recent communication I received from Attorney John Bridges of the law firm of Fenton & Keller in Monterey, California, who has informed me that he now represents the Powell family. You may recall from my previous communications and proposed amendment to the ordinance, which was adopted by the Board in pertinent part, that the Powell property well was drilled in a location which was not authorized by the County of Monterey or the California Coastal Commission, and has thereby failed to meet the minimum 25-foot setback from the adjacent property, causing an

Supervisor Jane Parker

Re: *New Well Ordinance*
Powell Family Well

June 18, 2010

Page 4

encroachment, which the Carmel Area Waste Water District now has suggested should be recorded as a deed restriction. This encroachment, as set out in the urgency ordinance, is specifically excluded from the grandfather clause.

As I am the owner of the property next door to the Powell property, I am intimately familiar with the issues surrounding this well location dispute. I personally spoke with Mr. Powell on the day the drilling began on his property and reminded him that the location he was drilling was not authorized by either the County or the Coastal Commission. He then informed me that he could "drill anywhere he wanted, because he had an inside guy at the County."

Nonetheless, Mr. Powell proceeded to drill in the unauthorized and non-permitted location which encroaches significantly on to my property and, I believe, onto the public roadway, as it does not meet the statutory 50-foot setback requirement nor the minimum 25-foot setback, that may be permitted under certain circumstances.

Mr. Bridges, on behalf of his client, has offered to pay for the encroachment, once again, attempting to sidestep the permit process. However, I have refused that offer. Therefore, I have urged County Counsel to recommend that the restrictive language regarding those who have not followed the permit process, as set out in the instant ordinance and previous regulations, be retained as proposed.

It is significant to note that the present owners of the property inherited the property approximately one year ago, shortly after the test well was drilled in the unauthorized location of the Powell property, and therefore, had no legal expectation of owning the property, let alone, the prospects of a well on a small urban lot, nor did they incur the expense of the drilling of that test well.

As you are aware, the grandfathering provision was permitted to accommodate those who had followed the County's rules, regulations and directives and had incurred out-of-pocket expense under procedures that were permitted prior to the Board being informed of the substantial change circumstance and potential risks of harm to the community.

THE MOZINGO LAW FIRM
A PROFESSIONAL CORPORATION

Supervisor Jane Parker
Re: *New Well Ordinance*
Powell Family Well

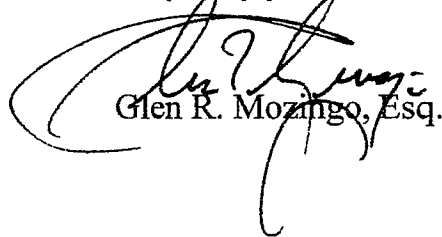
June 18, 2010

Page 5

While I recognize the political justification to allow those who have followed previous regulations to continue with their well drilling activity, despite the substantial findings that such actions adversely impact the public safety, health and welfare, to allow those who have intentionally disregarded the previous regulations and permit process would, in my opinion, be legally unsupportable.

Unfortunately, I will be out of the country on the date of the next hearing. However, I submit this written statement for purposes of having it admitted into the record.

Very truly yours,



Glen R. Mozingo, Esq.

GRM/sds

cc: Charles J. McKee, Esq.
County Counsel
168 West Alisal Street
Third Floor
Salinas, CA 93901
mckeecc@co.monterey.ca.us

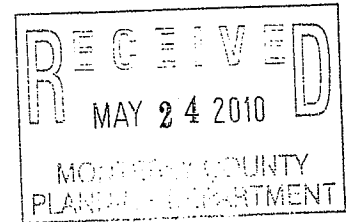
Wendy S. Strimling, Esq.
Deputy County Counsel
168 West Alisal Street
Third Floor
Salinas, CA 93901
strimlingw@co.monterey.ca.us

THE MOZINGO LAW FIRM
A PROFESSIONAL CORPORATION

4695 MACARTHUR COURT
ELEVENTH FLOOR
NEWPORT BEACH, CALIFORNIA 92660

E-MAIL: newportcounsel@aol.com

TELEPHONE (949) 798-6115 • FACSIMILE (949) 798-5721



GLEN R. MOZINGO, ESQ.
MANAGING PARTNER

NORTHERN CALIFORNIA

CARMEL
225 CROSSROADS BLVD., SUITE 133
CARMEL, CALIFORNIA 93923

FIRM ADMINISTRATOR

PAMELA AMIRAULT, CEP

MEMBERS

CALIFORNIA STATE BAR ASSOC.
NEW YORK STATE BAR ASSOC.
UNITED STATES FEDERAL BAR ASSOC.
INTERNATIONAL BAR ASSOC.
LAW SOCIETY OF ENGLAND & WALES

May 21, 2010

Carl Holm
Assistant Director
RMA Planning Department
168 West Alisal Street
Salinas, CA 93901

Re: *Subject Matter:* *Drilling of Private Wells on Parcels of Less
that 2.5 Acres*

Planning Number: *REF100015*

Planning Area: *Del Monte Land Use Plan, Carmel Valley
Master Plan, Carmel Land Use Plan,
Greater Monterey Peninsula Area Plan*

Zoning Designation: *Multiple*

Urgency Ordinance: *Pursuant to Government Code Section 65858
to Protect the Public Health Safety and
Welfare*

Agenda Item: *Not Identified as of 5/20/2010*

Dear Mr. Holm:

I offer the following observations and comments regarding the above-referenced Urgency Ordinance:

While it is difficult for any governmental entity to anticipate events which might arise in the future that would cause that government to modify a practice which, given the change of circumstance, requires it to re-evaluate policies and practices that have been permitted in the past, I believe that Monterey County Counsel, in its efforts to accommodate the change

Carl Holm

Re: Modification of Urgency Ordinance

May 21, 2010

Page 2

of circumstance as it relates to significant health, safety and general welfare issues of private well drilling, has done an exceptionally thorough job.

I am also aware of the sensitivity that both County Counsel and the Board have attempted to address by allowing certain exceptions to the Ordinance. More specifically, I reference Section 5, Exemptions, Subparts B and C.

Under Subpart B, the Ordinance states, in pertinent part:

“This ordinance does not prohibit owners who have an active, unexpired well construction permit from the Monterey County Health Department prior to May 25, 2010 from proceeding to construct the well as authorized under the permit.”

This provision makes specific reference to the requirement that the holder of an unexpired well construction permit will be permitted to proceed provided that the construction of this well is “authorized under an existing permit.”

However, as has come to the County’s attention, through the Monterey County Environmental Health Department, Environmental Health Division, Resource Management Agency Planning Department and Resource Management Agency Building Services Department, there are test wells that have been drilled in violation of the permit process which have been placed on small urban lots in locations that were not authorized by the County. Specifically, I reference APN Parcel Number 009-081-027, also known as the Powell Property, on which a test well was placed in a location that the property owner unilaterally decided should be changed from the location that was, in fact, authorized, creating issues, including but not limited to the unconstitutional taking of property of others which County Counsel has addressed in Section 10, *“No Taking of Property Intended.”* These unilateral actions also give rise to the concern of the Carmel Area Waste Water District as set out in its February 18, 2010 letter to Mr. Allen J. Stroh, Director, Department of Environmental Health, which is attached to this correspondence and incorporated by reference herein.

Carl Holm

Re: Modification of Urgency Ordinance

May 21, 2010

Page 3

Therefore, despite the fact that permitting small wells to continue to be developed in the above-referenced plan area, given the conceded public health safety and welfare issues under any exemptions, remains troublesome, I believe that the community would support the exemptions, provided that Subsection C of the proposed ordinance be re-written to insure that those who have elected to ignore the procedures and policies of the County of Monterey, thwarting the direction and intention of the County with respect to the location of a private well on a small urban lot, not be unintentionally condoned or authorized through this Ordinance.

To the contrary, any test well that has been drilled in contravention to the direction of the County of Monterey should not be allowed to proceed with conversion to a production well. Therefore, I propose that Section 5, Exemption Subpart C be re-written to read as follows:

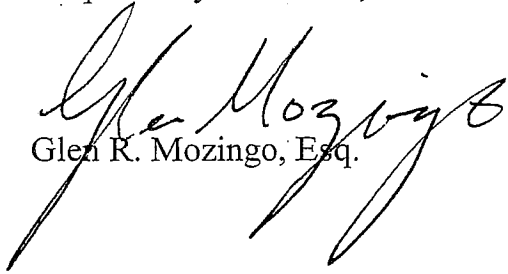
“This ordinance exempts applicants who have constructed a test well on a parcel in the coastal unincorporated area of the County prior to May 25, 2010 *provided that the test well has been drilled in accordance with the directions of the County of Monterey pursuant to permits issued and in locations that have been authorized by the County prior to the drilling of that test well.* For such applicants, this ordinance does not prohibit the County from accepting and processing applications for a discretionary development entitlement to convert the test well to a production well, provided that the test well was already constructed prior to May 25, 2010 *in accordance with the application and permit issued by the County of Monterey.*”
(Emphasis Added)

This action will accommodate the concerns of the Board as it pertains to those who have followed the direction of the County with respect to the construction of a test well and will recognize and prohibit further violations of those who have ignored the permit process through unilateral and unauthorized actions.

Carl Holm
Re: Modification of Urgency Ordinance
May 21, 2010
Page 4

I request that this correspondence with attachments be included in the Ordinance Hearing Packet.

Respectfully submitted,


Glen R. Mozingo, Esq.

GRM/sds

cc: Supervisor Fernando Armenta
Richard LeWarner
Supervisor Louis R. Calcagno
Supervisor Jane Parker
Supervisor Dave Potter
Supervisor Simon Salinas
John Ramirez
Charles J. McKee, Esq.
Wendy S. Strimling, Esq.
Mike Novo
Timothy McCormick
Ray von Dohren
Wayne Tando
Environmental Health Review Services
Board of Supervisors

Emails to: Fioril@co.monterey.ca.us
LeeR@co.monterey.ca.us
Lawrencel@co.monterey.ca.us
Oncianoj@co.monterey.ca.us
woldm@co.monterey.ca.us
Fordjh@co.monterey.ca.us